

## Contractual Obligations and (gasp!) Fraud??

I've got a risk I'm working on right now that causes me a great deal of agita. Main reason being that the insured doesn't care about quality of coverage, doesn't care if his policy covers anything at all, and just wants a cheaper policy than what he currently has. Normally, I wouldn't even work on such a policy, but this is an existing client of my largest agency, and for some reason the agent feels compelled to help the insured on his professional coverage.

Here's the problem: The insured does stress testing of parts that go into airplanes. The policy he currently has, as best I can tell, not only excludes claims arising from bodily injury and property damage (obviously the most catastrophic exposure) but also likely has a broad aircraft exclusion. This means that any claims arising from the use of aircraft by anyone, anywhere, any time are not going to be covered.

What's the point in him having such a policy? Got me. I suspect (and this is where the issues get prickly) he's being required by his clients to carry coverage. They likely said "show us proof that you have professional liability coverage", so he gets a policy that allows him to provide them a cert or a dec page.

What the clients may not have said is "show us proof that you have professional liability coverage that will respond to claims arising from the work you do for us." They should have, but chances are they did not. (Hence the need for my forthcoming book on contract requirements for service vendors - to be written for the benefit of risk managers. They try, but when it comes to professional, they just don't know what to ask for!)

To date, neither the agent nor I have seen a contract from this insured requiring coverage. If the time comes that I do see such a contract, and if it has wording about coverage being in place for the work being done, I think I will need to walk away from the risk.

An insured being short-sighted and shooting themselves in the foot is one thing. An insured being short-sighted and shooting their clients in the foot is another.

A couple years ago one of the instructors at my Ruble update mentioned that he had seen a few cases where the clients who were duped by insureds providing evidence of blatantly inadequate coverage brought suit not only against the insured for breach of contract, but against the insured **and** the agent for fraud. And he has seen clients win those cases.

I think this is one of those situations where agents and underwriters must ask themselves if it's worth doing business with that particular insured. There's a chance the downside potential by far exceeds any revenue to be made from it. Not to mention the ethical implications, if there is indeed a contractual requirement.

What a predicament!