

"A Rejection Form, a rejection form, My Kingdom for a rejection form!"

A cautionary tale with apologies to William Shakespeare

By Richard F. Lund, JD

In his play "Richard III", William Shakespeare relates the tale of King Richard III in which Richard is unhorsed on the battle field at the most crucial moment. In a desperate attempt to save himself, he cries out: "A horse, a horse, my kingdom for a horse!" Unfortunately for Richard, no horse is delivered and Henry dispatches him, succeeds to the throne as Henry VII and marries Princess Elizabeth of the House of York.

This very famous story highlights how one asset can be the most important factor in determining the success or failure of a person, especially when timing is critical. For Richard, it was his horse. For you as an insurance agent, while not as noble or glamorous, it can be the coverage rejection form. While certainly an agent won't lose his life without this form, the financial impact can be devastating. And to the contrary, if such a form is in obtained, not only may it save the day, it may also be financially rewarding if you are insured by Swiss Re Corporate Solutions.

A case in point: In 2011, an agent was retained to procure personal auto liability and umbrella coverage on behalf of his customer. The policy had UIM limits of \$250,000/ \$500,000 aggregate and an accompanying umbrella policy had a \$1MM limit. At that time, according to the agent, the customer signed a UM/UIM rejection form for the umbrella policy. Under this particular state law, an applicant must execute a signed UIM waiver form during the application process in order to waive UIM coverage under an umbrella policy. Additionally, the agency agreement with the insurance carrier expressly stipulated that the agency retain for the period specified in the underwriting requirements, all original, signed applications, driver exclusions, selections and rejections of optional coverage, premium discount documents, vehicle inspection reports, and power of attorney.

After the primary and umbrella policies were issued, the customer was involved in a serious accident that resulted in a significant brain injury. The claimant sought the full \$1MM umbrella limit from the carrier. (Notably under the law of the state, if an insurer fails to pay a first party UIM claim within thirty days, it may be subject to the assessment of double damages). The carrier contacted the agency to determine if any such waiver existed and after a thorough search, none was found. The carrier was required to pay the \$1MM limit of the umbrella policy and then tendered a \$1MM policy limit indemnification demand against the agency. Due to the agency's inability to locate the waiver and the language of the agency agreement, the claim was paid.

There are two key points to remember from this tale: the first is to always read your agency agreements thoroughly and be fully aware of their terms. The explicit language of the agreement was that it was the agency's duty to retain copies of certain documents and in particular to this case, the waiver of coverage form. Therefore, liability for indemnity to the carrier was absolute. Had the agency read *and understood* this provision, perhaps better care

would have been taken to ensure that the document was retained. When you are presented with any written agreement that you must sign in order to be able to do business with a company, be sure to read the document thoroughly and if you have questions concerning the provisions, consult with your own attorney to review and advise you of any provisions you may not understand. In many instances, some provisions may be negotiated if you or your attorney do not believe they properly state or protect your interests.

The second key point is to properly document and **retain rejections of coverages**. Offers of higher limits can, and would have in this case, prevented a significant exposure in which a claim was later made as it related to the coverage limit. And, if you are insured under a policy issued by Swiss Re Corporate Solutions/Westport Insurance Corporation, you may reap a financial benefit. Under the Deductible Reduction feature of the policy, if an insured agency generates and maintains contemporaneous written documentation of a customer's refusal to accept any type of coverage or limit recommendation made by the agency, and there is subsequently a claim alleging a failure to secure such recommended type of coverage or limit, then 50% of the deductible relating to that claim will be waived up to a maximum of \$12,500, or until dismissal of the allegations, whichever is first. For example, in the case above, if the agency had the signed waiver in its file, and an action was brought against the agency and costs were incurred, the agency would have been responsible for only 50% of their deductible. Had the deductible been \$10,000 for example, the agency would have saved \$5,000, perhaps enough to buy a horse!

For more information about how to properly document your files, go to www.iiaba.net/eohappens and look under "Prevention Tools". To learn more about the coverages that you should be offering to your customers, look for the "Virtual Risk Consultant" as well.

Hopefully this has given you a little help so that when you are on the battlefield in your everyday business, you won't end up like Richard III crying out "A Rejection Form, a rejection form, My Kingdom for a rejection form!"

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