DISASTERS, CATASTROPHIC EVENTS AND PANDEMIC: IDENTIFYING AND UNDERSTANDING THE AGENT/BROKER E&O RISKS, AND PREPARING TO DEFEND THE COMING WAVE OF E&O CLAIMS

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I. THE RISK

We truly live in extraordinary times. Terrorist attacks destroying what were thought to be practically indestructible towers that were built to withstand hurricane gale force winds even at a height of over 100 stories. Hurricanes (Katrina) and super storms (Sandy) that end up flooding huge swaths of the southern and eastern coastlines, and causing hundreds of billions of dollars in damages. Wildfires that consume hundreds of thousands of acres of land, including an entire community in northern California, including homes, businesses, schools, etc. Computer hacks that in one instance resulted in the loss of the data of over a billion customers. A worldwide pandemic that shutters businesses across the entire country and throughout the world, leading to literally trillions of dollars of damage to the world's economy, and a crushing blow to business operations of all sizes.

After each such catastrophic event, there may be state or federal assistance offered, and insurance will provide coverage for significant percentages of the injured parties' losses. But there are always individuals and businesses without sufficient insurance, or who believe they have insurance only to find that they have no coverage at all, or whose claims have been disputed or denied. Like waves rolling in towards the shore, following the initial losses resulting from these disasters and catastrophic events and the making of claims, the next wave invariably involves lawsuits brought against the insurers who have denied the claims. This is inevitably followed by a wave of claims against insurance agents and brokers.

The end result is that as surely as night follows day, the aftermath of disasters and catastrophic events is going to be a wave of insurance agent and broker E&O claims. While this might have seemed less of a concern when 100 year storms were still actually 100 year storms, catastrophic wildfires out west didn't occur every fall, and there was no such thing as the internet, the increasing rapidity with which society is facing truly disastrous losses, and the expansion of the type, scope and breadth of the disasters we face in our modern world, make it imperative that we consider the risks presented to insurance agents and brokers by this new reality, take time to understand them, and look closely at what can and must be done to both prepare for and defend against the claims that will be brought against them in the aftermath.

II. THE SCOPE AND BREADTH OF THE PROBLEM

Natural Disasters

According to data compiled by Munich Re, there were $150 billion in losses from natural disasters in 2019, with only slightly more than one third of the losses ($52 billion) insured. While the lowly percentage of the insured losses may seem surprising, Munich Re has reported that this matches the average of the past ten years. And while $150 billion seems a fairly astounding total, this total actually failed to match the $160 billion total of 2018, highlighted at the end of the year by the Camp and Woolsey fires in northern California. Those fires were estimated in one report to ultimately result in a total of over $21.5 billion in losses by themselves, with only approximately $16.5 billion covered by insurance.

The year prior, in 2017, there were just $12.5 billion in catastrophe losses through the first 6 months, and then, in rapid succession, we were hit by hurricanes Irma, Harvey and Maria, which added a total of $76 billion in losses, much of which were also uncovered.

Cybercrime

In 2017 there were an estimated 826 million data breaches, and per Symantec nearly 700 million people in 21 countries experienced some form of cybercrime. By the following year, 2018, this had increased to 2.3 billion data breaches. According to an Accenture report on the cost of cybercrime in 2018, 85% of organizations experienced phishing and social engineering attacks, and 76% suffered web based attacks. Accenture's Security 2019 report also indicated that malware cost organizations an average of $2.6 million in 2018, an increase of 11% over the prior yr. The next most costly type of attacks were web-based attacks, which cost an average of $2.275 million per yr. in 2018. On average, an IBM study estimated the average cost of a data

breach to a company in 2019 at $3.92 million. On average, according to SafeAtLast, the average cost of a ransomware attack on businesses is $133,000.

In 2016, 3 billion Yahoo accounts were hacked, and that same year Uber reported that hackers stole the information of over 57 million riders and drivers. In 2017, 412 million user accounts were stolen from Friendfinder's sites. That same year, 147.9 million consumers were affected by the Equifax breach, with the breach costing the company over $4 billion. Also in 2017, 100,000 groups in at least 150 countries and more than 400,000 machines were infected by the Wannacry virus, also at a total cost of approximately $4 billion.

Earlier this year, on January 23, 2020, Microsoft disclosed that 250 million Microsoft customer records, spanning 14 years, have been exposed online without password protection. It was first discovered on December 28, 2019 – a 25 day lead time to disclose the breach. Comparitech, a security research team, uncovered no less than five servers containing the same set of 250 million records that were accessible to anyone with a web browser – no authentication, no login required. The exposed data included email addresses, IP addresses, geographical locations, descriptions of the customer service and support claims, case numbers, and resolutions, and internal notes that had been marked as "confidential." Security experts note that while this may not seem as troublesome as disclosure of a social security number, for example, it is the type of information that may be used to gain access to a treasure trove of financial and personal data. Costs associated with this breach have yet to be estimated.

In a Lloyd's of London Cyber Risk Management report issued in January 2019, it was noted that a hypothetical coordinated global cyber-attack spread through malicious email could cause economic damages from $85-$193 billion and affect more than 600,000 businesses worldwide. Insurance claims under this scenario would range from business interruption and cyber extortion to incident response costs. Total claims paid by the insurance sector in this scenario were estimated to be between only $10 billion and $27 billion, meaning 86% of the losses would be uninsured. And even assuming such an event never occurs, with the estimates increasing every year, Cybersecurity Ventures predicts cybercrime will cost the world in excess of $6 trillion annually by 2021, up from $3 trillion in 2015.

Unfortunately for insurance brokers, in a study undertaken in 2019 of more than 100 CFO's and other senior executives commissioned by FM Global, more than 7 in 10 believed their company's cyber coverage would cover all or most losses from a cyber security event, even though the following negative effects of a cyber loss are typically not covered:

- Degradation of the company's brand/reputation
- Increased scrutiny from the investment community
- Decline in revenue/earnings
- Decline in market share
- Decline in share price

Pandemic

As of the time of this writing, 26 million people had been recently laid off in the U.S., with the country facing job losses at about 5 times the rate they were lost during the Great Recession. According to an assessment by the Asian Development Bank, it was estimated that, depending on the COVID-19 virus' spread through Europe, the U.S. and other major economies, the cost of the coronavirus pandemic could be as high as $4.1 trillion. According to a report in the Dallas Morning News, the cost to the U.S. alone could be a loss of 972.6 billion in real gross product, and the loss of 11.4 million jobs on an annual basis, even after the virus was contained and many of those laid off were returned to their jobs.

Because of this, companies are facing massive, unrelenting, and utterly devastating business interruption losses, with many filing claims for same under their property insurance policies. According to the American Property Casualty Insurance Association, small businesses have been losing between $255 and $431 billion of income monthly as a result of the

pandemic. In response, insurers were largely contesting the viability of the claims on the grounds that the losses were either made the subject of a specific virus exclusion, or the losses were not tied to physical loss or damage to property.

III. WHAT THIS MEANS FOR INSURANCE AGENTS AND BROKERS

Traditional Agent/Broker E&O Exposures

Traditional agent/broker E&O exposures include failure to purchase the coverage requested, failure to name an additional insured, negligence in the issuance of certificates of insurance, and negligence in the processing of a claim. In regards to placement of coverage, the generally recognized duty of care is limited to exercising good faith and reasonable skill, care and diligence in procuring the insurance requested in accordance with the client's instructions, obtain coverage which is not void, obtain coverage which is not materially deficient, obtain the coverage undertaken to be supplied at the requested limits, and obtain coverage for the client within a reasonable time or inform the client of the inability to do so.[1] There is typically no inherent duty to advise or guide the insured with respect to the amount of coverage to purchase or the limits.[2] The reason for this is that the customer is generally believed to be in the best position to know its insurance needs, the level of premium he/she can afford, and the amount of uninsured risk he/she is willing to absorb. Conversely, requiring the agent/broker to recommend types or amounts of coverage and be placed at risk for failing to do so would effectively make agents/brokers financial guarantors, and permit insureds to treat agent/broker E&O as excess coverage. And doing so would create the perverse disincentive for insureds to seek appropriate levels of coverage, so they could take advantage of this situation to the fullest.[3]

Expanded Exposures Based on Application of Fiduciary Standards of Care

These traditional guiding principles notwithstanding, the trend in the case law over the past decade or more has been to impose additional extra-contractual duties on agents and brokers, and give rise to claims against them for failing to properly advise as to types or amounts of coverage to purchase, failure to advise as to the limitations inherent in the coverage they have purchased and make sure the insureds fully understand and appreciate the risks presented and how their insurance will respond to same in the event of a loss, and failure to properly investigate the insured's needs, circumstances, special susceptibility to risks, and potential for uninsured loss prior to recommending or purchasing coverage on the insured's behalf.

The circumstances giving rise to these duties and obligations are typically referred to as "special circumstances" or the result of a "special relationship" between the agent/broker and the insured.[4] Common features of such special circumstances/special relationships giving rise to this heightened duty of care are: the receipt of compensation over and above and in addition to commissions on the sale of insurance, such as for a "service fee"[5] ; counseling of the insured with respect to specialized coverage or a specific coverage issue, or other "interaction with regard to a question of coverage" with the insured relying on the agent's/broker's expertise[6] ; the agent's/broker's exercise of broad discretion in servicing the insured's account[7] ; an extended course of dealing that would reasonably lead an objective broker to understand that his advice is being sought and specifically relied upon[8] ; and an ambiguous request for coverage that requires clarification.[9]

Complicating Factors

While one might think it should not be all that complicated for agents and brokers, made aware of the legal landscape, to draw lines and avoid being routinely saddled with increased levels of responsibility for their clients' insurance needs and risk management efforts, the fact of the matter is that there are a number of factors at play that make this much easier said than done. First, is the fact that with clients literally able to access multiple competing insurance coverages directly from a vast array of insurers simply by running searches on their laptops, tablets or smartphones, agents/brokers have no choice but to offer and agree to do more to justify

their existence. This leads to broker websites routinely promising to do things like the following, taken from actual broker websites (which are NOT recommended): provide a "range of experience in specific industries to offer you exactly the coverage you need"; provide "tailor-made risk management solutions based on expert advice"; provide "strategic decisions analysis"; "review insurer solvency"; "design comprehensive and complete programs for both insurance and risk management"; provide "performance beyond the required . . . in all we do"; "create the best products and services for your needs"; and negotiate with insurers to "secure the most favorable terms for you."

Second, there has been a long brewing and ever growing perception of insurance policies as being dense, complicated, and complex documents, which insurance customers need help translating into English.[10]

Third, there has been a long brewing and consistently evolving perception of insurance agents/brokers both by the insurance buying public and the courts as more than just order takers, but rather highly trained professionals with special expertise, whose implicit promise in taking you on as a client is to help guide you through the insurance buying process.[11]

Increased Risk to Third Parties

Added to this increasingly dangerous landscape for insurance agents and brokers is the fact that there is also an increasing risk of exposure beyond the risk to their customers, stretching out to the individuals and entities who would benefit from the insurance. It is not uncommon that, when a party is liable to a third party it has injured in some way, the bulk of any recovery that might be available to the third party will be found in the insurance available to cover such liability exposures. Typically, the courts have found that, except in very narrowly circumscribed situations, agents and brokers owe a duty of care to their customers/insureds, not to the public generally. This justification turns on definitive foreseeability – the public generally is not definite enough to be foreseeable.[12] However, where the agent's/broker's customer has caused harm to a third party which will not be adequately compensated by the available insurance, it is not uncommon for the customer/defendant to assign his rights as against the agent/broker in satisfaction of the liability exposure presented. Whereas such assignments had in the past been looked upon with disfavor by the courts, the clear trend is for such assignments to be upheld.[13] This has resulted in greater exposure threats to agents and brokers, who now may face liability exposures that in the past would simply have melted away with the customer's inability to satisfy a judgment against them.

Additionally, courts have expressed greater willingness to consider the existence of a duty of care owed to third parties who can be seen at the outset to have been specific, intended beneficiaries of the insurance, rather than unknown, unforeseen, and random members of a universe of potential beneficiaries of the liability coverage made available to the insured. An example of where a broker was deemed to have liability beyond its customer, and to the ultimate beneficiary of the liability coverage being purchased for the customer, is *Cleveland Indians Baseball Co., L.P. v. N.H. Ins. Co.,* 727 F.3d 633 (6th Cir. 2014).

Putting it All Together

Putting this all together, what this adds up to is that in a world in which truly catastrophic losses are becoming more frequent, and the risk exposure to potentially catastrophic loss is exceedingly varied and wide spread, agents/brokers face ever greater risk themselves. And when catastrophe strikes, and with it the inevitable raft of uninsured or underinsured victims of these catastrophes, insurance agents and brokers are going to be at ever greater risk.

This is particularly the case when it is noted that a substantial proportion of the losses incurred by disasters will not be insured, and customer perceptions regarding what is or will be covered don't match up with the coverages actually in place. And in the post-COVID-19 pandemic world we will hopefully someday soon be living in, where there will undoubtedly be multitudinous insureds with either no coverage, or insufficient coverage for what are going to be truly catastrophic business interruption losses, uninsured D&O claims, etc.

IV. STRATEGIES FOR DEFENDING AGAINST INEVITABLE WAVE OF AGENT/BROKER E&O CLAIMS

Developing Themes

In anticipating these types of claims, and understanding the heightened risks presented, it is important to make sure at the outset of litigation that appropriate themes are developed in the course of investigation and discovery to allow for an opportunity to get past the inherent difficulties presented in defending against these types of claims, and build a counter-narrative. This means making sure not only that documents related to the purchase of the specific insurance coverages and claims in issue are identified and gathered and reviewed, but that documents relevant to the brokers'/insureds' history of doing business together are identified for potential relevance, gathered and reviewed as well. To counter the insured's contention that it placed complete trust and faith and reliance in the broker to advise and guide it with respect to insurance to purchase, it is critical to look for evidence that all final insurance buying decisions were left in the hands of the insured, that the insured would often reject the broker's recommendations, that the insured would make decisions based on price rather than avoidance of risk, that the insured would periodically bid out the insurance to competing brokers, that the insured would regularly leave certain assets or risks intentionally uninsured, etc. This requires a focused effort at developing a picture not just of the narrow circumstances regarding a single policy of insurance and a single loss, but the entirety of the insurance buying and risk management philosophy of the insured, as evidenced by its history, as well as a comprehensive picture of the relationship with the broker.

This can often require subpoenaing other brokers the insured did business with, looking at various types of risks insured against, interviewing and deposing numerous individuals, and piecing together a mosaic from thousands of separate tiles that, together, tell the story of whether or not there were truly "special circumstances" or there was in fact a "special relationship" between the broker and the insured. These efforts can often be complicated by the fact that over time document management systems may have changed, there will often be agents/brokers who have failed to adhere to protocol with regard to making notations of significant communications, there can sometimes be agents/brokers with critical knowledge of the insured's insurance buying practices and history who have moved to competing firms and thus may not be readily accessible to defense counsel, and courts can often be skeptical that such broad based discovery is truly necessary to what they may perceive as the limited question at issue: i.e., what was discussed regarding the specific coverage in issue.

Understanding the Stakes and Meeting the Challenge

Because catastrophic losses can often lead to enormous uninsured exposures, these types of agent/broker E&O claims can frequently give rise to high stakes litigation risks. There is no doubt there will be COVID-19 pandemic related claims that present such exposures. When confronted with these types of risks, one of the first things it is imperative to understand is that the trial starts at the start of depositions. Mistakes made at this stage can be fatal, and witnesses who are unprepared not only risk coming across as lacking in credibility, but lacking in the requisite ability to present their understanding of their responsibilities, acceptance of any failings on their part that will serve to humanize them and immunize them from successful cross-examination, and firm and credible explanations for why they ultimately fulfilled their duties and responsibilities to their customers, the lack of sufficient insurance available to indemnify or hold them harmless for the customer's losses notwithstanding.

It is also imperative to understand the need to meticulously build out the case you are planning to make, document by document, communication by communication, witness by witness; to lock the plaintiffs in to their stories and leave no wiggle room; and to make sure you have identified early and fully addressed potential evidentiary issues so there are no surprises at trial.

Additionally, it is important as early in the litigation as possible to game the case out through how you plan

to present your defense at trial, including preparing your jury verdict questionnaire early on, as well as your anticipated requests to charge, so you are building out your case to fit within the framework you have constructed, and you have checked off every box, and you have played out and gamed out how the testimony and evidence will and must be presented in order to achieve success at trial.

Further, because of the anticipated high stakes, it is critical to take advantage early on of jury science, including testing themes to see how they will play with an anticipated representative sampling of your jury pool, and holding mock trials to see how jurors will likely react to the witnesses and evidence and thematic case presentation you are planning to make. Not every case will justify the investment, but these cases do. And because of the potentially substantial value of these cases, this can be an extremely useful tool in terms of valuing the cases for settlement purposes.

It is also critical as early as possible to sort through what can often be a shockingly thin pool of credible standard of care experts, to make sure you get the strongest expert working for your side before he has been snatched up by your adversary. The sad truth is that there are not all that many truly outstanding agent/broker standard of care experts available. If it is clear one will be needed, it is important to grab hold of one who can be trusted to prepare a strong report, and with the spine, the experience and the savvy to see where traps are being set, and to control the framing of the issue. It is also imperative that you make sure you have found and put in place any necessary damages experts, and to make sure you oversee with great care the development of the expert opinions to be presented. In doing so, it is critical that you have taken the time to reverse engineer the opinions being offered to ensure that all the necessary Daubert factors have been met, your experts are not offering ultimate fact conclusions in the guise of opinions, they are not drawing conclusions unsupported by the record, they are not making credibility determinations, they are not drawing legal conclusions, and they are coming across as neutral arbiters of the specific issue they have been asked to offer an opinion on, and not as advocates for or against a particular party.

Lastly, it is imperative that you put together an aurally and visually tight, concise, compelling, stimulating and engaging trial presentation, which moves quickly, makes full use of the strongest witnesses and as limited as possible use of the weakest witnesses for your case, and leaves the jury believing that you are fully in command of the case you are presenting, and the means by which you are presenting it. In doing so, it is imperative to remember that modern jurors have the ability to access the most high level, engaging, sophisticated content at any time, day or night, in the palm of their hands. They will not suffer rambling, repetitive, sleep inducing presentations happily.

V. CONCLUSION

The statistics bear out that following disasters, the natural arc of historical precedent involves an initial period of quiet on the agent/broker E&O front, while the battles over coverage are first being fought. But these coverage litigations will immediately thereafter be followed by a wave of claims against insurance agents and brokers, holding potential to involve both extensive numbers of, and extremely high severity claims. For the insurance broker, the time is now, right now, to do everything possible to document the claims discussions, to make records of admissions and acknowledgements that the insurance in place was the result of conscious and informed decisions, and to make sure account files are preserved as fully as possible. For the defense attorney, it is critical to understand that the battle in front of you cannot consume you, leave you with blinders on, and lacking capacity to view the larger picture. The battle must be waged on many fronts. And it starts now.

End Notes

[1] *Sullivan Co. v. New Swirl, Inc.,* 437 S.E.2d 30 (S.C. 1993); *accord Bainum v. Lincoln Nat'l Life Ins. Co.*, 2018 WL 1505495 *2 (W.D. Ark. Mar. 27, 2018).

[2] *Baker v. Kentucky Farm Bureau*, 2018 WL 3814763 *3 (Ky. App. Aug. 10, 2018); *Murphy v. Kuhn*, 682 N.E.2d 972 (N.Y. 1997); *Peter v. Schumacher Enterprises, Inc.*, 22 P.3d 481, 486 (Alaska 2001); *Sadler v. Loomis Co.*, 776 A.2d 25 (Md. Ct. Spec. App. 2001).

[3] *Farmers Ins. Co. v. McCarthy*, 871 S.W.2d 82, 85 (Mo. Ct. App. 1994); *Suter v. Virgil R. Lee & Son, Inc.*, 754 P.2d 155, *cert. denied*, 111 Wash.2d 1005 (1988); *M & E Mfg. Co., Inc. v. Frank H. Reis, Inc.*, 692 N.Y.S.2d 191 (App. Div. 1999); *CIGNA Property & Casualty Companies v. Zeitler*, 730 A.2d 248, 261 (Md. Ct. Spec. App. 1999).

[4] *Szelenyi v. Morse, Payson & Noyes Ins.*, 594 A.2d 1092, 1094 (Me. 1991); *Sadler*, 776 A.2d at 46; *Robinson v. Charles A. Flynn Ins. Agency*, 653 N.E.2d 207 (Mass. App. Ct. 1995); *Harts v. Farmers Ins. Exchange*, 597 N.W.2d 47 (Mich. 1999); *Murphy*, 682 N.E.2d 972; *Nelson v. Davidson*, 456 N.W.2d 343 (Wis. 1990).

[5] *Sandbulte v. Farm Bureau Mut. Ins. Co.*, 343 N.W.2d 457, 464 (Iowa 1984), overruled by *Langwith v. Am. Nat. Gen. Ins. Co.*, 793 N.W.2d 215 (Iowa 2010) but reinstated and adopted by legislation at Iowa Code section 522B.11(7)(a), abrogating Langwith.

[6] *Voss v. Netherlands Ins. Co.*, 8 N.E.3d 823 (N.Y. 2014).

[7] *Meridian Title Corp. v. Gainer Grp., LLC*, 946 N.E.2d 634, 637 (Ind. Ct. App. 2011); *DeHayes Grp. v. Pretzels, Inc.*, 786 N.E.2d 779, 783 (Ind. Ct. App. 2003) (holding that obtaining insurance quotes did not constitute exercise of "broad discretion.").

[8] *Citta v. Camden Fire Ins. Assoc., Inc.*, 377 A.2d 779, 780 (N.J. Super. Ct. App. Div. 1977); *Bicknell, Inc. v. Havlin*, 402 N.E.2d 116, 119 (Mass. App. Ct. 1980); *Somnus Mattress Corp. v. Hilson*, 280 So.3d 373, 384 (Ala. 2018)

[9] *Stoll Grp. LLC v. Cottrill*, No. 320763, 2015 WL 2437127, at *2 (Mich. Ct. App. May 19, 2015); *but see Prod. Credit Ass'n of Se. Wisconsin v. Gorton Farms*, 573 N.W.2d 549, 554 (Wis. Ct. App. 1997) (holding that broker was not responsible for clarifying ambiguity)[10] Matray, Michael. Beazley Hospital Claims Data: Steep Increase in Largest Malpractice Claims Behind a Firming Hospital Professional Liability Market. Medical Liability Monitor, Vol. 45. No.1, January 2020 at 1.

[10] *Nav-Its, Inc. v. Selective Ins. Co. of Am.*, 869 A.2d 929, 933-34 (N.J. 2005) ("Because of the complex terminology used in the policy and because the policy is in most cases prepared by the insurance company experts, we recognize that an insurance policy is a contract of adhesion between parties who are not equally situated."); *AAS-DMP Management L.P. Liquidating Trust v. Acordia Northwest, Inc.,* 63 P.3d 860 (Wash. Ct. App. 2003), review denied, 79 P.3d 445 (Wash. 2004) (where insurance policy was so long and complex that the broker prepared an 80-page summary); *New Amsterdam Cas. Co. v. Addison*, 169 So. 2d 877, 881 (Fla. Dist. Ct. App. 1964) ("The accepted rationale ... is that insurance policies are prepared by experts in this complex area, and the intricate interplay of their various provisions is difficult for a layman to understand.").

[11] This can be traced to a pair of decisions in the 1970s: *McAlvain v. Central Ins. Co.,* 554 P.2d 955 (Idaho 1976); *Rempel v. Nationwide Life Ins. Co., Inc.*, 370 A.2d 366 (Pa. 1977). It has continued with greater emphasis to this day: *National Fire & Marine Ins. Co. v. Infini PLC*, 2019 WL 95894, *8 (D. Ariz. Jan. 3, 2019).

[12] *Johnson v. Doodson Ins. Brokerage, LLC*, 793 F.3d 674, 679 (6th Cir. 2015) ("If there is a third-party beneficiary class to the contract, it is the public at large, which the Michigan Supreme Court has held is 'too broad to qualify for third-party status.'"); but this is of course not without exception in states that adopt a "general foreseeability" standard, e.g. New Jersey *(Eschle v. E. Freight Ways, Inc.,* 319 A.2d 786, 787-88 (N.J. Super. Ct. Law Div. 1974)) (holding that where the state's policy is that auto insurance policies are for the protection of the public at large, an agent may be liable to injured third parties for their negligence) and California (*Westrick v. State Farm Ins.,* 187 Cal.Rptr. 214, 218 (Ct. App. 1982) ("while an insurance agent who promises to procure insurance will indeed be liable for his negligent failure to do so, it does not follow that he can avoid liability for foreseeable harm caused by his silence or inaction merely because he has not expressly promised to assume responsibility.").

[13] *DC-10 Entm't, LLC v. Manor Ins. Agency, Inc.*, 308 P.3d 1223, 1229 (Colo. App. 2013) (holding the Court saw no reason to prevent assignment where the claim arose "from a commercial transaction and the insured ha[d] the same expectations of the insurance broker that he or she would have of the insurer."); *Wachovia Ins. Servs., Inc. v. Toomey*, 994 So.2d 980, 990 (Fla. 2008) ("negligence claims against an insurance broker are assignable"); *Stateline Steel Erectors, Inc. v. Shields*, 837 A.2d 285, 289 (N.H. 2003); *AMCO Ins. Co. v. All Sols. Ins. Agency, LLC,* 198 Cal.Rptr.3d 687, 694-95 (Ct. App. 2016).

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