Increased litigation is common during an economic recession. This was proven during the 1990s recession when litigation against professionals arose from the collapse of the property markets. The current economic downturn has seen a repeat of this. Brokers are often the target for allegations of negligence when a policyholder’s claim is rejected or part paid. This may be because of under insurance or for breach of a condition or warranty. Two recent examples are the high profile cases of Jones v Environcom (2010) and Café De Lecq v RA Rossborough (2012).

As a specialist PI Broker, we notice the conduct that contributes to claims and we offer our thoughts here.

Email and ecommunication
The ease of emailing and texting has removed the formality of day-to-day business communication. We see the over use of shortened expressions, insurance jargon; and a general lack of structure and thought to communications. This has weakened brokers’ traditional defences in litigation.

Previously managers oversaw all correspondence leaving a broker’s office and errors would be corrected. With modern practices such as the use of email, those reviews are no longer feasible, removing this protection.

Ethics
As a result of the recent banking fiasco, the meaning of ethics is unclear and subject to public debate. All financial services businesses, including brokers, are vulnerable to accusations of being unethical. However, putting the interests of your client before those of your company is a sound start.

Know your client
As a result of modern broking quotation technology and the decrease in face-to-face dealing many brokers do not get to know their client in the way they once did. Yet knowing your client is the way to reduce the risk of litigation. If material information is not disclosed in a proposal form or Statement of Fact, the broker will find it difficult to demonstrate that they knew their client.

After the Environcom and Rossborough cases, brokers cannot rely on standard form explanations, and warnings to discharge their duties highlight and explain the effect of onerous terms and conditions. Remember ICOBs 5.2.2 requires that brokers provide to clients both a statement of demands and needs, and the reasons for giving that statement.

Your client understanding you
It is essential that clients understand their obligations imposed by the insurance process and under policy. Avoiding industry jargon, brokers must clearly explain to clients their duties to the insurer (including to disclose material facts), the principal terms, conditions and exclusions of the policy (including any onerous terms), and the consequences of breaching those obligations or the policy.

It is not good enough to put caveats and warnings hidden in the insurance documentation. The courts are very clear that notices in standardised documentation may not be sufficient for brokers to discharge this duty, as demonstrated by the cases above.

Under insurance
A common cause of claims against brokers is under insurance. Clients are usually required to inform the broker of the required sum insured. The danger is that clients do not know how to calculate this and may under-estimate.