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Are BriteCo and Jewelers Mutual turning jewelers into insurance agents?

It is defined as “agreement of agency.” It is potentially what insurance companies like BriteCo and Jewelers Mutual have enticed retail jewelers to become by providing jewelers with proprietary computer software programs used by the insurance company to generate insurance policy sales contracts. In the case of the above examples, these computer software programs are provided under the guise of “appraisal software.” We will discuss the term “appraisal” shortly. The first issue is the question regarding this relationship between jeweler and insurance company. Does the relationship create a defacto agreement of agency between the two? Before we discuss further specifics, we need to lay the foundation of the terms. We will start with the legal definition of an agent.

According to the Legal Information Institute of Cornell University Law School an “agent” is defined as:

“A person with authority to act on behalf of another person.”

<https://www.law.cornell.edu/wex/agent>

Specific to our discussion, the International Risk Management Institute, a leading authority of the insurance industry defines “insurance agent” as:

“An insurance agent is a person or organization who/that solicits, negotiates, or instigates insurance contracts on behalf of an insurer and can be independent or an employee of the insurer.”

<https://www.irmi.com/term/insurance-definitions/agent>

To take the final step in our definitions, I turn to the Texas Department of Insurance

TITLE 13. REGULATION OF PROFESSIONALS
SUBTITLE A. GENERAL PROVISIONS
CHAPTER 4001. AGENT LICENSING IN GENERAL
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 4001.051. ACTS CONSTITUTING ACTING AS AGENT.

(b)a person is the agent of the insurer for which the act is done or risk is taken for purposes of the liabilities, duties, requirements, and penalties provided by this title or Chapter 21 if the person:

- (1) solicits insurance on behalf of the insurer;**
- (3) advertises or otherwise gives notice that the person will receive or transmit an application for insurance or an insurance policy,**

An example of the above would be a person setting up as a State Farm Insurance agent. They would set up an office, receive an agreement with State Farm to represent themselves to clients for the purpose of selling insurance for State Farm, and would be given the appropriate computer programming to transmit client information to State Farm for the purpose of providing a quote and hopefully a sale of an insurance policy. The computer program used is owned and controlled by State Farm, is proprietary to State Farm, and only transmits the potential client information to State Farm.

Now, let us compare that to what the insurance companies like BriteCo and Jewelers Mutual are doing with local jewelers:

They make agreements with local jewelers to represent their respective companies to clients for the purpose of selling insurance for BriteCo or Jewelers Mutual. The jeweler is given the appropriate computer program to transmit client information to the two companies for the purpose of providing a quote and hopefully a sale of an insurance policy. These computer programs, under the guise of appraisal software are controlled by BriteCo and/or Jewelers Mutual, are proprietary to each company, and only transmits the potential client information to BriteCo or Jewelers Mutual.

I think everyone can already see the point. But let us take this one step further, remuneration of the jeweler/agent by the insurance companies.

Jeweler's Benefit of Agency

The Jewelers Mutual website offers payment for jewelers to act as their agents in selling their insurance, using their computer program to generate a policy application when they state:

"Benefits include:

Getting paid for each appraisal accompanying a completed application through the Jewelry Appraisal Solution."

<https://zing.jewelersmutual.com/membership/dashboard/zing-dashboard>

BriteCo offers much the same offer, simply worded a bit different:

“What you gain as a jeweler partner: Extra Revenue”

<https://brite.co/for-jewelers/>

The answer to the question of establishment of agency seems clear. BriteCo and Jewelers Mutual have established an agreement of agency with the local jewelers since the agreement consists of the following factors based on insurance law and the Texas Department of Insurance Statutes:

1. Insurers provide proprietary software programs with an agreement that the jewelers will work exclusively on behalf of the insurance company with financial gain for acting as an agent. All information on the programs goes directly and solely to the insurance company, and
2. Jewelers actively solicit and/or instigate an insurance sale for an insurance company, and
3. Jewelers advertise or otherwise give notice that the person (customer) will receive or transmit an application for insurance or an insurance policy.

The problem for jewelers

Here comes the potential problem for jewelers. Not BriteCo and not Jewelers Mutual. For jewelers.

We turn first back to the Texas Department of Insurance Title 13:

Sec. 4001.101. LICENSE OR CERTIFICATE OF AUTHORITY REQUIRED; DESIGNATED PRODUCT CERTIFICATE. (a) Unless the person holds a license or certificate of authority issued by the departmenta person may not:

(1) solicit or receive an application for insurance in this state; or

(2) aid in the transaction of the business of an insurer.

Obviously, local jewelers are soliciting clients to file and transmit an application for insurance and providing aid to the insurer by using their proprietary software program to transmit information for the policy. But what about other states?

From the Illinois General Assembly website:

(215 ILCS 5/Art. XXXI heading)

ARTICLE XXXI. INSURANCE PRODUCERS, LIMITED INSURANCE REPRESENTATIVES AND REGISTERED FIRMS Sec. 500-15. License required.

(a) A person may not sell, solicit, or negotiate insurance in this State for any class or classes of insurance unless the person is licensed for that line of authority in accordance with this Article.

The key is to sell or solicit. Jewelers are being offered financial incentives to solicit and sell insurance by the use of the insurance company owned and controlled software programs.

One more, from the California Insurance Code:

1631. Unless exempt by the provisions of this article, a person shall not solicit, negotiate, or effect contracts of insurance, or act in any of the capacities defined in Article 1 (commencing with Section 1621) unless the person holds a valid license from the commissioner authorizing the person to act in that capacity. The issuance of a certificate of authority to an insurer does not exempt an insurer from complying with this article.

<https://law.justia.com/codes/california/2009/ins/1631-1651.html>

There is a myriad of additional legal sources on this issue, but I think everyone gets the point at issue: by using the insurance company proprietary software to solicit and instigate insurance business for the company, jewelers are acting as agents for the insurance company. By all state insurance laws I could find, this should require the jeweler to be a state licensed insurance agent.

The potential problems go beyond lack of agent licensing, however, and into the litigation arena. Since the jeweler is apparently injected into the insurance equation it potentially places them in the line of fire for litigation not only for insurance issues but for appraisal issues. Remember that both companies call their proprietary programs supplied to jewelers as “appraisals.” And both make claims of:

“ Make Appraisals Easy” Jewelers Mutual website

WHAT WE OFFER JEWELERS

**Welcome to a faster, easier, more reliable way to appraise and insure jewelry.
Finish an appraisal in 5 minutes!** BriteCo Website

Clearly these insurance companies claim to make every retail jeweler a qualified appraiser using their software programs. But what is an appraiser?

The Uniform Standards of Professional Appraisal Practice, (USPAP) of The Appraisal Foundation defines an appraiser and their job as an appraiser:

APPRAISER:

One who is expected to perform valuation services competently and in a manner that is independent, impartial, and objective. USPAP pp. 3

CONDUCT

An Appraiser: must not advocate the cause or interest of any party or issue

Standards Rule 7-1 General Development Requirements

In developing a personal property appraisal, an appraiser must

(a) be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal:

(b) not commit a substantial error of omission or commission that affects an appraisal:
and

(c) not render appraisal services in a careless or negligent manner.... pp. 42

<https://www.appraisalfoundation.org/>

The reasonable assumption, based on claims by both insurance companies, is using their proprietary software will make any jeweler a qualified jewelry appraiser. However, by USPAP standards an unknown number of jewelers using these programs:

1. Are not properly trained to issue competent appraisals,
2. Are, in fact, advocating the cause of their respective insurance companies they represent, and
3. Are not aware of, or understand, recognized methods and techniques necessary to produce a credible appraisal.

Summation

It must be noted that all of the above is a caution for jewelers from the Global Claims Associates and not a formal finding by any Insurance Commissioner of any U.S. State. This report is being sent to the Insurance Commissioners of all 50 United States asking for their ruling or opinion of the issues laid out above. Should they agree that there are issues, local jewelers should make themselves aware of the fact regarding any insurance company provided software of any kind that puts the jeweler in a position of agency or acting as an agent.

There is no such thing as “free.” Based on my research, I believe the insurance companies like BriteCo and Jewelers Mutual are offering these “free appraisal programs” as a way to cajole jewelers into acting as sales agents for the companies. Jewelers are jumping on board thinking they have a free, quick, and easy way to suddenly become qualified appraisers.

Both BriteCo and Jewelers Mutual are riding a wave of excitement over these activities right now. But there is a very real possibility that when that wave finally breaks on the shore, it will be the retail jeweler left hitting the rocks.

Where this whole thing lands is still to be known.

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