

Inside Insurance: Best Terms Pricing – Lazy Underwriting, Regulatory Crackdown, and How In-house Counsel Can Help

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Welcome to our *Inside Insurance* series, developed to provide topical, succinct, and practical insights that address real issues in-house counsel and other insurance and reinsurance industry executives face on a regular basis. As always, we are here to help.

We once heard a wise industry leader refer to best terms pricing simply – and correctly – as lazy underwriting. A crutch. Something to prohibit internally in order to help underwriters maintain a high level of proficiency.

For other reasons, Canada's provincial insurance regulators are now paying closer attention to best terms pricing and prohibiting it in certain circumstances. Towards the end of 2020, British Columbia enacted a prohibition against insurers implementing best terms pricing when underwriting portions of subscription policies that cover strata risks in that province. Alberta implemented a similar prohibition around the same time. In December 2020, the Canadian Council of Insurance Regulators issued a press release suggesting regulators' respective intentions to review best terms pricing practices in the property and casualty insurance market more broadly. You can spot the beginning of a trend here.

Simply put, "best terms pricing" refers to the practice where an insurer submits a quoted premium for its portion of a subscription insurance policy (a policy where a panel of insurers underwrite respective percentages of a particular risk) and qualifies that quote by providing, essentially, "if another panel insurer submits a quote with a premium higher than mine, I can charge that higher premium too." You can see how this causes insureds to pay higher premiums and how prohibiting this practice leads to the fairer treatment of insurance customers.

How Can In-house Counsel Help?

First, in-house counsel to insurers should take steps to address the two current prohibitions in British Columbia and Alberta immediately. Such counsel should educate their strata underwriters on these prohibitions and coach them to not incorporate into strata quotes best terms pricing provisions. They may also wish to review the first couple of quotes their strata teams prepare after the coaching – before they are submitted.

If their insurer client delegates strata underwriting authority to one or more managing general agents (MGAs), in-house counsel should ensure the relevant program administrator agreements (or MGA agreements) are amended to incorporate explicit prohibitions on the MGA implementing best terms pricing practices when underwriting strata risks in British Columbia and Alberta. Such in-house counsel may wish to incorporate these provisions into the agreement's main body and, since it is likely the part referenced more frequently by the MGA, into the agreement's underwriting guidelines if they are separate from the main body. Anticipating other provinces implementing similar prohibitions, the in-house counsel may wish to ensure the restrictive provisions are drafted broadly enough to apply to the underwriting of strata risks in all provinces.

Second, in-house counsel to insurers should accept this regulatory trend will likely continue across Canada and to property and casualty risks more broadly – not just strata. With this in mind, they should engage their client's chief underwriting officer (or equivalent) to discuss strategies to identify, and eventually eliminate, any best terms pricing practices that exist in the company. After all, and to borrow from the learned industry leader referenced above, doing so will only help to strengthen the insurer's underwriting discipline.

Our team has assisted insurers and brokers to draft new - and amend existing - program administrator agreements to include provisions that help both remain compliant with their "best terms pricing" obligations discussed above. We would be pleased to assist you too in this regard.

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