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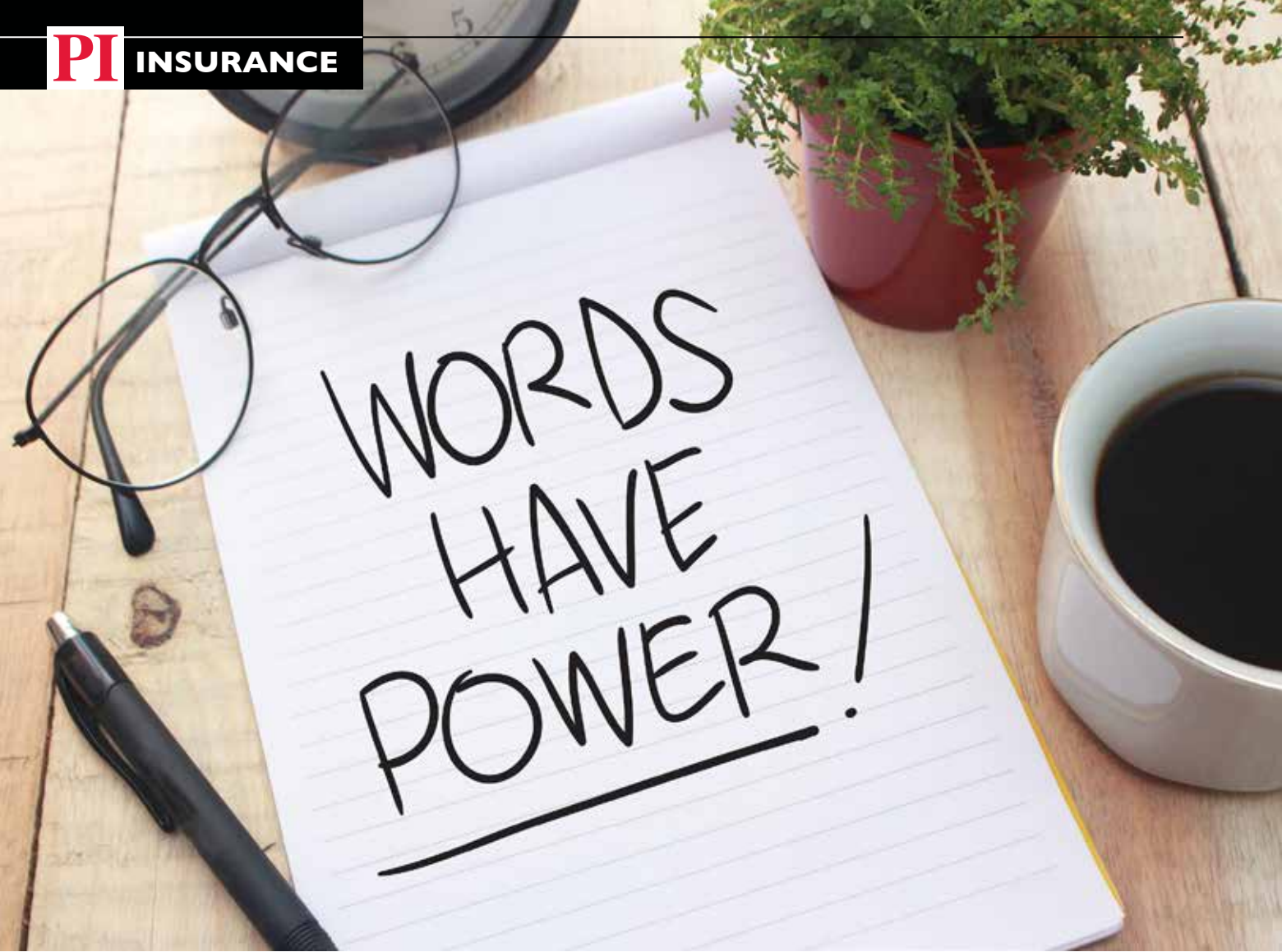
# CYBERPOL

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WORDS  
HAVE  
POWER!

# The Power of Language in Risk Management

BY **GEORGIANA EISENHARDT**

Facebook pages, websites, Yelp reviews, Google search ads: Running a small business in the modern world depends on constant communication across multiple channels. Carefully crafted, convincing messages and slogans attract clients and clearly describe available services. Yet some marketing messages are based on wishful thinking more than fact. When this kind of bravado creeps into contracts, a private investigator may increase their likelihood of lawsuits or liability.

## **OVERPROMISING IN MARKETING**

From a risk management perspective, providing great service starts with setting achievable expectations. For many people, their first contact with any kind of business happens via the web, whether they find it through a

website or Google search. The expectation you set in your marketing sets an expectation for clients. If you guarantee, for example, that you can find anyone, anywhere, how might a client react if you are unable to complete an impossible search?

I don't mean to suggest that clients can sue you simply because of your web copy. However, hyperbolic web copy may be used against you in settling a lawsuit related to your service. In fact, we have seen marketing promises come into play in mediations related to an insurance claim.

If a client contracts you for a computer forensics investigation and feels you have not followed through on your marketing promise to "recover every file," their attorney may be able to claim that you have created an expectation that you have failed to meet. It may come into play if a jury is asked to determine whether or not you were negligent in your service.

## CONTRACT LANGUAGE

Even more important than marketing language is contract language. This is a concern for any business contracted to provide a professional service. Because I am not a lawyer, I cannot speak to the specifics of contract law. However, we see contract language involved in insurance claims. As in marketing copy, this is another place to avoid guarantees and absolutes. If you guarantee an outcome, you may be in breach of contract if you are unable to meet that target.

**“I don’t mean to suggest that clients can sue you simply because of your web copy. However, hyperbolic web copy may be used against you in settling a lawsuit related to your service.”**

It is important to keep an eye out for specific language in contracts. Take for example a contract with a law firm. You conduct an investigation which results in someone suing the law firm for invasion of privacy. Though the law firm contracted you for the investigation, the liability for the suit may fall on you if your contract included an indemnification clause that protects the law firm. This allows the firm to shift financial responsibility for claims related to an investigation onto you.

Another issue in contracts is a “waiver of subrogation.” Subrogation means your insurance company can recover costs incurred in a claim that are partially the fault of another party. If you waive this, the financial responsibility will fall solely on you and your insurance policy. For example, let’s say an employer contracts you to conduct a workers’ compensation investigation, and the employee in question sues you for invasion of privacy. A waiver of subrogation in your contract with the employer protects them from financial responsibility for that claim.

You do your best to follow through on the promises you make. However, you may not be able to eliminate all contractual risks, nor can you guarantee a client may not take issue with how your marketing language compares to the outcomes of your investigation. That’s where insurance coverage comes in. Your liability policy should include contractual liability, in addition to errors & omissions. If you have questions about the risk you are assuming in your contracts, it is helpful to review them with your lawyer, if you are not already doing so. Your insurance broker or insurer can also be a resource in providing a perspective on risk management. **PI**



*Georgiana Eisenhardt is program manager for PI Protect from the Brownyard Group, where she works closely with private investigators, security consultants and professionals in related fields. PI Protect is a leading provider of specialized insurance coverage for investigators. Learn more at [www.brownyard.com](http://www.brownyard.com).*

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