

Beware Of Cookie-Cutter Claims Analyses

Law360, New York (February 10, 2012, 5:42 PM ET) -- Perhaps the most distinctive change in claims processing in the last 20 years has been the routine injection by insurance companies of so-called forensic accounting firms into the heart of the loss-adjustment regimen.

Make no mistake about it: These are no dispassionate auditors to assist the policyholder in advocating its claim, but partisans for the insurer's point of view that have been put in place to hone down the numbers.

This has resulted from a number of factors and has caused innumerable difficulties for policyholders.

The causes range from a curtailment of the discretionary authority of the company field and supervisory adjusters, the diminished skills of both levels of adjusters, the concerted effort by insurers to hold down claim costs and the desire on the part of insurers to impose a uniform imprint on the handling of accounting issues as well as the handling of business income losses.

It proceeds from a mistaken perception that business income claims are in an accountant's bailiwick when, in reality, they are an adjuster's province. The result is a delay in the adjustment process while the accountant inevitably formulates a series of questions and builds up the billable hours in the file to pursue some elusive inquiries.

Underlying the difficulties impacting policyholders is the unstated premise that insurance company forensic accountants bring to the table: they subtly raise the level of proof required to justify a settlement to, at least, beyond a reasonable doubt, but more often, to beyond a shadow a doubt.

Insurance company forensic accountants are used to having two columns add up and equal each other and that is the same mindset that governs their approach to claim settlements.

However, unfortunately, some issues cannot be resolved or be reduced by making two plus two equal four. As you may know, the correct burden of proof for a policyholder accepted by most courts is by a "fair preponderance of the evidence" or "it is more likely than not."

Let us illustrate for you from recent experience how an insurance company forensic accountant's approach to business income losses can seriously undervalue those claims and how difficult it becomes for policyholders to contest their findings.

One of the crucial elements of any business income claim is the forecast of business during the period of interruption. Good sense and good policy holds that the forecast is comprised of a projection based on the historical experience, the macroeconomic picture (where the general economy is heading), the microeconomic scene (what are the prospects in the policyholder's particular industry), and where does management perceive that the business is headed.

The American Institute of Certified Public Accountants seems to think that the plans of management are the most important component of any forecast of business.

You will find that, in constructing a forecast, forensic accountants engaged by insurers will inevitably rest their forecast on an historical premise and will never interview management. As a result, they are ignorant of any important developments that may drive a business in the future and were aborted by the covered loss. It is very difficult to unwind this constricted view of the future.

Another area where preconceived notions are brought to the adjustment process by insurance company forensic accountants is in the computation of discontinuing expenses. The measure of a business income loss is, essentially, the loss of gross profit less discontinuing expenses.

When evaluating the discontinuing expenses, these "forensic" accountants rigidly develop percentage relationships of the presumed discontinuing expenses to the loss of sales and then apply these results to the loss, irrespective of the actual expenses incurred during the period of restoration. The artificial results from the application of this rigid template are then imparted to the loss calculation.

This is not an exceptional exercise, but a routine part of the insurance company forensic accountant's formulation and implicates a Daubert-like thesis into the result.

These two presumptions are illustrative of the partisan approaches that so-called insurance company "forensic" accountants take to business income claims and, in effect, contaminate any coloration of independence from their calculations. There is also just as much a position of advocacy taken in evaluating losses to personal property.

So, when an insurer assigns an insurance company "forensic" accountant to a claim, beware: It is not for the benefit of a policyholder in order to reach a dispassionate result, but to force the result into a preconceived template with which the insurer is comfortable.

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