

The Quest for Quality Insurance Company Claims Handling

by Joshua Gold

If you have a sizeable insurance claim (or even a smaller one but recurring in nature), getting quality and fair claims handling can be elusive.

Over the past years, I have lost count of the number of policyholders (both corporate powerhouses and smaller-sized businesses) who arrive at our firm beside themselves over the coverage position taken by their insurance company come claims time. The refrain is often a familiar one: if my insurance policy does not cover this claim, then what use is it? Underpinning that sentiment is a conviction that the claims position taken by the insurance company defeats the entire purpose of the supposed insurance protection in the first place.

Such reactions are often triggered by insurance company attempts to construe coverage grants narrowly and exclusions broadly. Fortunately for policyholders, the law of most states dictates that this is exactly the wrong starting point to evaluate insurance coverage for a claim. Nonetheless, most policyholders have little interest in wrangling with their insurance companies for the foreseeable future so they would prefer not to have to rely upon the law as applied by the courts for a resolution.

The situation is not hopeless, however. There are steps that can be taken to improve the policyholder's position comes time to file a claim.

First, as noted in an article I wrote close to 20 years ago with my mentor, colleague and friend (the late, great founder of our law firm) Gene Anderson, policyholders need to conduct their due diligence on the insurance company from which they purchase their insurance. Insurance protection is far too important to have the choice of insurance company be dictated by premium price alone. While it is understandable that businesses have to operate within a budget and some are bottom-line

driven, there are many drawbacks to purchasing insurance from a company that doesn't pay claims without a fight. A cut-rate premium does little good for a policyholder if the insurance company's intent is to simply make the money back through their claims handling unit.

With this in mind, policyholders are well-advised to get as good an understanding as they can about the claim-paying reputation of their prospective insurance company. Insurance brokers are usually a good place to start with this inquiry. Savvy insurance brokers will often have an informal tracking sheet of which companies play by the rules and which do not. While it is rare to find an insurance company that is a pushover when it comes to paying claims, some are far more onerous than others. Good brokers often know who is who.

Second, policyholders can do their part in keeping claims handlers in check. If there is a claim, make sure you notice it promptly and across all potentially applicable lines of coverage. There are few penalties for withdrawing a notice of claim under a policy that turns out to be covered elsewhere. However, there can be severe potential penalties for untimely notice urged by the insurance company—think a “forfeiture of coverage” argument. This point is true for keeping excess and umbrella insurance companies in the loop. Some policyholders think that they need not involve the excess or umbrella until it looks like a claim is likely to pierce their layer. Check your excess and umbrella policies to ensure that this is really the case—you may be surprised.

Also, it is important to keep communications in writing where possible to memorialize your furnishing of information, cooperation and notice of subsequent developments like legal costs, damage estimates and settlement opportunities. Regular written communica-

tion can go a long way toward preventing an insurance company claims handler from Monday morning quarterbacking you to death.

Third, if you see an insurance company take a coverage position that radically departs from the insurance policy terms or law as you understand it, nip the situation in the bud—don't let it fester. Not only is it important to minimize any waiver or admission arguments by the insurance company, but policyholders will want to get the dialogue back on track quickly by pointing out errors in the insurance company's understanding or reasoning. The flip-side of this is also to make sure the insurance company takes a coverage position reasonably promptly. Some insurance companies have a tendency to issue a general reservation of rights without

ever committing to an insurance position (all the while withholding money claimed or refusing to commit to the resolution of an underlying proceeding). This can obviously have an impact on a number of important considerations for policyholders like business planning, accounting/reporting, defense strategy in the case of a liability claim, settlement funding, budgeting and cash-flow (for some).

In sum, be diligent, be persistent, and yes, be wary. ■

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