ETHICAL DECISION-MAKING FOR ADJUSTERS

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UNDERSTANDING ETHICAL STANDARDS

- A claims adjuster determining coverage for a claim must adhere to the ethical standards under applicable adjusters’ codes of ethics and the Fair Claims Settlement Practices Act.

- When coverage counsel is involved, those same considerations apply together with all the ethical standards of the profession and under Codes of Professional Responsibility.

- This course will help adjuster’s understand their ethical responsibilities by explaining the code of ethics, Fair Claims Settlement Practices Act, good versus bad licensee conduct, and ways and examples as to how ethical issues arise with insurance claims.
ETHICAL RESPONSIBILITIES IN HANDLING CLAIMS

- Violations of ethical standards can result in the revocation of the adjuster's license to handle claims.

- Even when the adjuster is in an adversarial position to the insured (i.e., coverage issues) the ethical rules still apply.

- The nature of the relationship can change to one that is adversarial. Where the issue of coverage arises, the relationship may become an adversarial one.
ADJUSTER’S CODE OF ETHICS

The following examples are from the code of ethics of the California Association of Independent Insurance Adjusters:

- To conduct ourselves at all times so as to command respect within the industry of insurance and with the insuring public.
- To approach investigations and adjustments with an unprejudiced and open mind and a determination to be fair with insured and insurer.
- To make truthful and unbiased reports of facts as we find them.
- To assume an unvarying attitude of fairness and by competence, integrity and respect for the person with whom we have dealings, to promote goodwill toward the business of insurance.
- To resist influence tending to promote improper and extravagant settlements.
- To avoid improper alliances.
- To refrain from improper solicitation of business.
- To be alert to changes in policy forms and methods in order to render the highest quality of service.
- To work for economy of expense and equitable bills for service.
- To serve the business of insurance with loyalty and to cooperate with insurers and their designated representatives in the proper handling of claims and losses.
- To work in harmony with one another and our clients so as to foster cordial relationships among ourselves and with the insurance fraternity.
UNFAIR CLAIMS SETTLEMENT PRACTICES ACT

- The Fair Claims Settlement Practices Act’s stated purpose is to set forth standards for the investigation and disposition of claims arising under policies of insurance.

- A common law action for bad faith is the ultimate form of enforcement action for improper claims handling.
CALIFORNIA INSURANCE CODE SECTION 790.03

Unfair and Deceptive Acts or Practices in the Business of Insurance

- (h) Knowingly committing or performing with such frequency as to indicate a general business practice any of the following unfair claims settlement practices:
  
  - (1) Misrepresenting to claimants pertinent facts or insurance policy provisions relating to any coverages at issue.
  
  - (2) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.
  
  - (3) Failing to adopt and implement reasonable standards for the prompt investigation and processing of claims arising under insurance policies.
CALIFORNIA INSURANCE CODE SECTION 790.03

- (4) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss requirements have been completed and submitted by the insured.

- (5) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear.

- (6) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by the insureds, when the insureds have made claims for amounts reasonably similar to the amounts ultimately recovered.
(7) Attempting to settle a claim by an insured for less than the amount to which a reasonable person would have believed he or she was entitled by reference to written or printed advertising material accompanying or made part of an application.

(8) Attempting to settle claims on the basis of an application that was altered without notice to, or knowledge or consent of, the insured, his or her representative, agent, or broker.

(9) Failing, after payment of a claim, to inform insureds or beneficiaries, upon request by them, of the coverage under which payment has been made.
CALIFORNIA INSURANCE CODE SECTION 790.03

- (10) Making known to insureds or claimants a practice of the insurer of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration.

- (11) Delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either, to submit a preliminary claim report, and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information.
CALIFORNIA INSURANCE CODE SECTION 790.03

- (12) Failing to settle claims promptly, where liability has become apparent, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.

- (13) Failing to provide promptly a reasonable explanation of the basis relied on in the insurance policy, in relation to the facts or applicable law, for the denial of a claim or for the offer of a compromise settlement.

- (14) Directly advising a claimant not to obtain the services of an attorney.

- (15) Misleading a claimant as to the applicable statute of limitations.
EXAMPLES OF GOOD, HONEST & PROPER LICENSEE CONDUCT

- Diligently follow the instructions of the adjuster’s client and exercise skill and care at all times, refusing to be influenced in his or her investigation or in any settlement by self-interest or by subversive considerations urged upon the adjuster by others.

- Provide full disclosure to the insured of coverage for which the policy must respond.

- Return telephone calls, letters and other communications promptly and in sufficient detail and respond to enquiries without undue delay.

- Where coverage is denied under a policy of insurance the adjuster shall take steps to arrange for the claimant or policy holder to be advised promptly in writing, of the reason for the denial of liability.

- When consideration is not given to a potential claim by a third party the adjuster shall, on the instruction of his client, promptly notify the claimant of the denial.
EXAMPLES OF BAD, IMPROPER AND DISHONEST LICENSEE CONDUCT

- Fail to inform the client or policy holder of any matter or fact which may materially affect the claim or prejudice their interests.

- Take improper advantage of a policy holder’s inexperience, lack of education, youth, lack of sophistication, language barrier, un-businesslike habits or ill health

- In the course of business, write letters, whether to the client, policy holder, claimant, another adjuster or any other person, which are abusive, offensive, or otherwise inconsistent with the proper tone of a professional communication from an adjuster.
WAYS ETHICAL ISSUES ARISE

- Most common ways ethical issues arise:
  - Background investigations
  - Witness interviews
  - Criminal histories
  - Financial/Tax investigations
  - Health/Medical records
  - Records and document investigations
  - Alibi verifications
  - Loss site inspections
  - Bankruptcy records
  - Divorce records

- Example Ethical Behavior

- Example Unethical Behavior
HOW TO IDENTIFY, PREVENT & RESOLVE ETHICAL DILEMMA

- Examples of how to identify unfair claims practices:
  - An insurer may be acting in bad faith if the insurer delays, discounts or denies payment without a reasonable basis for its delay, discounting or denial.
  - Failure of insurer to acknowledge and reply promptly upon notification of a covered claim.
  - Failure of Insurer to pay a covered claim as a result of failing to do a proper, prompt and thorough investigation as to reasonable liability and damages based upon all available information.
  - Failure of insurer to affirm or deny coverage of claims within a reasonable time upon receipt of claim and/or proofs of loss.
  - Insurer attempts to settle a claim for less than the amount to which a reasonable person would have believed was entitled or attempts to substantially diminish a claim requiring an insured to initiate litigation.
  - Attempting to settle claims on the basis of an application and/or policy which were altered without notice, knowledge or consent of the Insured.
HOW TO IDENTIFY, PREVENT & RESOLVE ETHICAL DILEMMAS

- To prevent and resolve unfair claims practices, an adjuster must:
  - Avoid conflicts
  - Act with due diligence
  - Be honest and truthful
  - Not advise against seeking advice of counsel
  - Be fair and objective when interviewing witnesses
  - Treat the claims in accordance with the policy
  - Conduct fair and complete investigations
  - Take proper care when dealing with the elderly
  - Not negotiate with a represented party
  - Not draft special releases
  - Report improper conduct of other adjusters
EXAMPLE #1:

Insurance Company

v.

Independent Adjuster
CASE INFORMATION

- Insurance company insured restaurant and owner of the restaurant building. Four separate claimed losses were adjusted by Independent adjuster (fire, water, theft, vandalism).

- Insurance company’s policy covered lost business income for 12 months with a 90 day period of extended business income coverage. Independent adjuster contacted owner of construction company to prepare an estimate and provide emergency services at the fire scene and was hired to repair damages.
RULING ON CONTROVERTED ISSUES AND DAMAGES

- Construction company and/or independent adjuster knowingly/negligently misrepresented scope of the losses and/or costs of repair to third party administrator and insurance company. (triggered E&O coverage)
ADJUSTER ETHICS IN QUESTION

- After the initial fire loss was assigned to Independent Adjuster within a very short amount of time additional and separate claims were made water, theft, and vandalism losses. Independent Adjuster was assigned to each claim, and made sure that his contractor of choice, was on the job with him.

- Independent adjuster hired construction company to write the estimates and do the emergency repairs.
Independent adjuster and construction company worked together to maximize the estimates, overlapping claims to avoid the policy limits. They were aware that the policy limits on the first claim for the fire loss were likely to exceed the limit, so some of the "damages" were shifted to a claimed subsequent water loss in order to invoke a new policy limit. In adjusting the claims, independent adjuster improperly "double counted" some items of damage, and inflated the estimates by representing that the floor tile and booths were water damaged to the point that they needed to be replaced, contrary to credible evidence. Independent adjuster was thus enabled to enrich construction company, who in return remodeled his home. This was at the expense of insurance company, to whom he was duty bound to act honestly and fairly.

Independent adjuster company failed to properly supervise and monitor its employee, to make sure that independent adjusters’ reporting was accurate, and therefore also failed in its duties to insurance company.
RED FLAGS

- Independent adjuster’s employee called third party administrator and told him that someone had entered the burned out business and spray painted it; however, third party administrator noted that there had been a six foot fence surrounding the property and no signs of forced entry were visible. Independent adjuster told him he was “driving by the risk on the way to another claim” and that he “noted water damage.”

- Independent adjuster’s said there was approximately 1-1/2 inches of standing water and that he had to call a plumber to come and turn off the water. He also said that the items would have to be repaired from the fire anyway. Formal notice was not received until later and the report stated that water on the floor was “at least three inches deep if not more” and that the entire restaurant was flooded and that the estimate related only to water damage.
EVIDENCE WITH SUPPORTED FACTS

- Independent adjuster colluded with construction company in order to inflate the estimates after the first loss so that the total payout would exceed this limit.

- Independent adjuster relied on construction company owner’s estimates which overstated the work to be done.

- Testimony eventually revealed that adjuster and contractor left the restaurant with water actively flowing from broken pipe. Independent adjuster said “I’m not a plumber.”

- Independent adjuster failed to provide information that contractors and subcontractors had furnished bids and estimates for amounts significantly less than the construction company estimate.

- Independent adjuster never sent photographs of damaged floor tiles, which in fact were undamaged.

- The job of an independent adjuster is to provide a fair estimate; however, the independent adjuster manipulated the unit pricing and dimensions to inflate the estimate.
OVERVIEW OF COURT FINDINGS

- Court finds that due to the improperly adjusted losses, manipulated estimates, falsely claimed items of damage and failure of supervision of the handling of the claims to ensure an honest and accurate adjustment, Insurance company overpaid benefits and overpaid loss of business income benefits due to unreasonable delays in providing information for the permitting process.

- Court also finds that the conduct of defendant independent adjuster employee was also fraudulent due to his dishonesty and false representations.
EXAMPLE #2:

Insured Homeowners v. Insurance Adjuster
CASE INFORMATION

- Insured homeowners sued defendants, an insurer and its adjuster, alleging negligent misrepresentation and intentional infliction of emotional distress.

- The trial court held that a negligent misrepresentation claim cannot lie against an insurance adjuster as a matter of law. Plaintiffs appealed.

- Plaintiffs alleged that the adjuster falsely told plaintiffs that their insurance policy did not cover the cost of cleanup; the adjuster either knew the representation was false when he made it, or he made it with reckless disregard of truth; and insureds relied on the adjuster’s false statements to their detriment.
PLAINTIFF’S CLAIMS REGARDING INSURANCE ADJUSTER ETHICS IN QUESTION

- A tree limb crashed onto the house of insured (breaking windows and causing damage to the chimney) and they reported the incident to their homeowners insurer; who assigned an insurance adjuster to adjust the loss.

- On the insurance adjuster’s first visit to the scene, he altered the scene by moving branches to take photos, spoke derogatorily to homeowner, and misrepresented the policy coverage, causing homeowners to begin cleanup themselves, and causing injury to homeowner.

- Insurance company refused the homeowners request to replace the insurance adjuster.
RED FLAGS

- Independent adjuster told homeowners that he only had a few minutes to review the damage; and only spent 15 minutes at the home.

- Before taking photos of the damage, adjuster pushed branches out of living room window, and then told homeowner to clean up the living room.

- Adjuster told homeowner that cleanup was not covered under the policy, stating, “If a car had hit the tree causing it to fall, then the clean-up would be covered but since the wind caused the limb to fall, the cost to clean up the limbs was not covered.”

- Adjuster informed homeowners that insurance company was denying coverage for the chimney damage because, “fireplace appeared to be in good and serviceable condition” and “there was no visible evidence that the fallen tree branch impacted the chimney”.

- Insurance company received additional information from homeowners’ attorney stating that their personal licensed contractor found that the tree limb damaged the chimney, which was concluded after inspecting the property three times”. Insurance company never responded.
OUTCOME OF APPEAL

- The judgment in favor of the adjuster was reversed, and the matter was remanded for further proceedings.
FINAL TAKE

- An adjuster must remember to step back and evaluate adjustment and investigation of the claim and ask themselves if they are doing the right thing.
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