

SPECIAL REPORT

DIVERSE COMPETING INTERESTS ALTER EXPECTATIONS OF THE INSURANCE POLICY

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William Passannante, co-chair of Anderson Kill & Olick, P.C.'s insurance recovery group (one of the major insurance coverage law firms in the country) recently said, "There's a difference between what some policyholders believe they're purchasing and what the claims person is willing to deliver at claims time." This struck a chord with me, and it is so true.

There are essentially four parties involved in the development and payoff of an insurance contract for a particular insured:

- The insured
- The broker / agent / solicitor
- The insurance carrier underwriter
- The claims adjuster for the insurance carrier

Now let's take a look at each of these elements and see why the interests of each party can create diverse **expectations**.

The Insured

Even though it is required that an insured read an insurance contract, seldom (if ever) does this happen. If it did happen, it is virtually impossible for an insured to have any idea of the importance of each word of the insurance contract or of the options available to modify that contract.

The motivation in this case is to pay the lowest premium possible, and the **expectation** is to have the best coverage possible but without really knowing what "best coverage" means.

The Broker / Agent / Solicitor

The second element in the negotiating of an insurance contract is the broker / agent / solicitor, or whatever you want to call him or her. From a practical standpoint, only this person can change the course of events before the loss occurs that can provide an insured with adequate protection from a claim.

This person should be the following (but in most instances is not):

- an evaluator of what insurance policy or carrier will best match the needs of the insured;
- a negotiator of the terms and conditions of that policy which need to be changed;
- an advocate of the interests of the insured with the insurance carrier;
- proficient at understanding all of the vagaries of the insurance contract;
- an advisor to the insured of what they really need to have;
- an educator to the insured of what they have in fact received by way of the terms and conditions of the insurance contract; and
- a facilitator in the claims process with a goal to obtaining a rapid and fair settlement that reflects the terms of the insurance contract.

The mission of the typical insurance agent is to gain a commission for a sale and then to move on. This pressure is created by an insurance agency system that rewards sales and in fact wants the sales person to sell and then move on to the next prospect, relegating service to Commercial Service Representatives that typically are reacting to requests for certificates of insurance or to file claims.

Therefore, the primary **expectation** in this case is to make a sale, and the **expectation** is that the insured will read and understand the policy.

The Insurance Carrier Underwriter

The insurance carrier underwriter is charged with the responsibility of obtaining a profit for that person's employer, the insurance carrier, and to incur losses that are lower than competitors. In order to do this, the underwriter needs to limit the risks that it covers. This is done by having terms and conditions of the contract that meet the needs of the insurance carrier and not the insured.

Again, the underwriter's **expectation** is that the insured will read the policy and understand what it covers.

The Claims Adjuster

The claims adjuster has the mission to pay only what the insurance contract requires and not a dime more. The insurance adjuster will read the policy in conservative terms in order to avoid criticism of paying claims that should not be covered. To the extent that the insurance adjuster can find a "gotcha," that person is likely to impress the executives of the claims department and the executives of the insurance carrier.

The **expectation** is that the insured has read and understands the policy and has agreed to its terms and that there is a level playing field of coverage expertise.

CONCLUSION

What is the message here? The message is that the interests of all of these four parties are widely divergent, and every party to the policy (except the insured) has the **expectation** that the insured has read and understands the policy.

From a practical standpoint, only the insurance advisor is able to alter the course of events that could otherwise ruin a person or a business enterprise.

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