

SPECIAL REPORT

DODGING BULLETS – THE INSURANCE ADJUSTER IS NEVER YOUR FRIEND

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No offense, but a claims adjuster is not your friend and not on your side of the table when it comes to negotiating the settlement of a major claim, in particular property insurance claims where your business may have been damaged or destroyed because a fire, as an example.

The adjuster will not be influenced by the fact that you did not read your insurance policies and did not understand its terms and conditions.

The adjuster will not be influenced by the total loss of your business and the layoff of all your employees unless the adjuster finds that there is business interruption coverage that applies to this event.

The adjuster will not cut you any slack because you threaten to remove your business account from that insurance company.

The adjuster will not change his or her mind if your insurance agent calls, threatening to remove all of its business from this particular insurance company.

The adjuster will not pay a claim if your insurance agent made a mistake in an application or in ordering the policy. The reason for this is that in Michigan, the insurance agent is your agent and its acts are binding on you.

The adjuster's job is to pay only in accordance with the terms and conditions of the insurance policy that you purchased. This is a contract and is no different than any other contract that you may enter into.

The adjuster is not in a position to change any terms and conditions of the policy itself and to do so could result in the adjuster becoming liable for the unwarranted payments of perhaps millions of dollars, not to mention the loss of the adjuster's job.

The adjuster is also the initial person to assess your coverage for this particular loss based upon the adjuster's interpretations of the terms and conditions that apply and the facts of the particular loss itself.

If there is a dispute relative to the adjuster's assessment of the terms and conditions of your insurance policy, you have a right to go to Circuit Court and ask for a declaratory judgment on the facts of your particular case.

This sounds simple, but it is not. First of all, it takes time for the adjuster to determine a formal position regarding the claim. Next, in the event of a dispute, you must find an attorney that is experienced in insurance coverage disputes and that attorney must investigate the claim and gather information in order to file an action for declaratory judgment.

This could involve forensic investigations, depositions of witnesses and other people involved in the loss itself, as well as the securing of pertinent documents such as engineering reports, fire investigation reports and so forth. Think in terms of many months to get this done and a significant amount of legal fees that you will not recover, even if you win.

The best way to avoid a coverage dispute to begin with is to have the policy properly negotiated in the first place, so as to minimize the bullets that you would have to otherwise dodge.

It is highly unlikely that anyone in an insured's office will have the expertise to do this and it very well could be that your insurance agent does not have the expertise to do this either.

It takes years of experience to know the ins and outs of insurance policies, insurance carriers, options available and which insurance company, generally, has the least amount of bullets to dodge. It also takes years of experience to understand these specific coverages and the limits that are important to your type of business.

The very last thing that you want to do is select an insurance policy based on the lowest premium cost.

The question really should be which insurance program will be best able to allow you to quickly restore your business in the event of a catastrophic loss.

A properly negotiated insurance program is not typically more expensive than an insurance policy that is not properly negotiated and could actually be less expensive when comparing premiums and your total risk of loss costs.

One last item to be concerned about when it comes to a claim is the misrepresentation clause in the standard policy:

CONCEALMENT, MISREPRESENTATION OR FRAUD

This Coverage Part is void in any case of fraud by you as it relates to this Coverage Part at any time. It is also void if you or any other insured, at any time, intentionally conceal or misrepresent a material fact concerning:

1. This Coverage Part;
2. The Covered Property;
3. Your interest in the Covered Property; or
4. A claim under this Coverage Part.

A word to the wise: be very careful what information you provide to an adjuster relating to a claim. Any misrepresentation could result in a complete denial of the entire claim.

Again, the insurance adjuster may be a nice person, but that person is definitely not your friend when it comes to enforcing the terms and conditions of an insurance policy that you have purchased.

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