

# The Ethical Investigation of Claims

## The Insurance Professional Perspective

By Frank T. Zeigon and Matthew J. Smith



**I**n the summer 2012 issue of *Litigation Management*, we addressed the ethical considerations of an insurance lawyer. While the attorney's role is defined, the claims professional must be part lawyer, contractor, doctor, investigator and accountant to name just a few roles. A basic understanding of the law and state regulations and statutes will affect every claim. Preparing or reviewing structure damage estimates requires building and contractor expertise, and the same is true to properly analyze the medical aspects of a claimed injury.

Every adjuster is required to gather facts and information to make an informed decision. Each claim involves a monetary or economic loss requiring some accounting and financial knowledge. Being an insurance adjuster is a complex career. The insurance adjuster is the conductor of the various instruments comprising the claim investigation process. The adjuster sets the tempo of the claim process

and must hold everyone accountable to reach an informed and prompt coverage decision.

Throughout this process, the adjuster must keep an open mind, balance the interest of the claimant and the insurance carrier and make certain those involved in the claim process are moving the investigation forward promptly and fairly. An adjuster must put the interest of the insured above the insurance company, but do so while conducting a thorough and complete investigation. There is also a duty under most state laws to make certain the insured is kept advised of all aspects of the claim investigation.

The adjuster will be the gatekeeper in deciding how the claim is investigated. All reasonable leads should be explored, and especially those that may be favorable to the claimant's position. Failure to do so may be considered prejudicial to the investigation or show you were attempt-

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ing to find a way to deny coverage. The adjuster also needs to document all significant activities throughout the investigation while refraining from putting personal animosities, derogatory or unsupported comments and snide or humorous notes into any file material.

As the old Dragnet saying goes, "just the facts" and nothing more. A well-trained adjuster controls the investigation while delegating appropriate tasks to persons specifically responsible for given aspects of the investigation or legal advice. An adjuster's job is never easy, and files involving insurance fraud investigation make the role even harder. Every investigation must be thorough and ethical. Do not prejudice the claim or voice any opinion to public officials, agents, investigators or experts regarding the investigation or coverage decision until the investigation is concluded. Stating an opinion regarding coverage prior to the completion of the investigation is not a privileged comment and may be used to show you prejudged the claim before the investigation was complete.

In all communications and dealings with the insured or claimant, the adjuster and everyone involved in the investigation must try to maintain a cordial working relationship and treat the parties with the utmost of courtesy and respect. A proper claim investigation should not be adversarial. Even if the claimant baits the adjuster into trying to be confrontational, this should be avoided at all costs.

Every adjuster will face multiple ethical considerations. A brief checklist of issues adjusters commonly face includes:

- ◆ Place fair and honest treatment of the claimant above your own or the company's interest.
- ◆ Be competent and knowledgeable as to the terms and conditions of the insurance contract, including all areas of coverage and duties of the insured.
- ◆ Adjust the claim in strict accordance with the insurance contract.
- ◆ Approach every investigation, adjustment and settlement fairly and in a manner that is not prejudicial to the claimant.
- ◆ Ensure all reports and communications are truthful, based only in fact and complete.
- ◆ Avoid delay and handle each claim with due diligence to achieve a proper disposition of the claim as promptly as reasonably possible.

- ◆ Use extraordinary care when dealing with elderly, disabled or claimants with any type of language or other deficit to make certain they are protected and not disadvantaged during the claim investigation process.
- ◆ Respect in some losses, whether involving bodily injury or property loss, there may be a period of shock or serious mental or emotional distress and trauma of which you need to be respectful while also trying to move the investigation forward as reasonably promptly as possible.
- ◆ Do not give legal advice.

While the above list is extensive, the key is quite simple: handle every claim as you would want a claim for one of your own family members handled by another insurance professional.

Another reality is insurance adjusters may be tested when handling a claim in many ways including offers of cash payments or favors. Many claims involve a large amount of money at stake, but any type of offer of a favor or payment should be reported immediately to a supervisor and failure to do so will be grounds for termination, is clearly unethical and may be illegal.

Another ethical dilemma faced in insurance claims is receipt of an anonymous tip or a request from an informant for compensation. While such tips should not be ignored, they must be approached with caution. Anonymous information should be noted in the file, but without a witness to ultimately testify at trial, the information may not be admissible. Request for payment for claim investigation information should not be handled at the claim adjustment

level, but referred to the appropriate claims or SIU supervisory personnel to be addressed in accordance with the company's policies.

Every insurance adjuster should pride themselves on their choice of profession and the quality of work they perform. You have a difficult job and during your career will face many ethical and professional challenges. Each of us in the insurance industry have a great deal of trust placed upon us to do the right thing and on our shoulders rests the integrity of how others view our chosen profession. ■

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