


Claims: How to Deal with The First Few Crucial Contracts

A Continuing Education Presentation




1

1

Richard S. Pitts

8900 Keystone Crossing, Suite 800
Indianapolis, Indiana 46240
(317)-554-8592
(317)-554-8593 (facsimile)
rpitts@arlingtonroe.com




2

2

AGENDA

1. Claims Investigation
2. Photographs, Narratives and Documentation
3. E-mail and Internal Documents
4. Insured's Statements
5. Principles in Loss Settlement
6. THE CLAIMS GAME!



3


3

1. Claims Investigation

Zalma, The Basics of Property Claim Adjusting, IRMI 2003:

Early and important facts to gather:

- when the loss occurred;
- the type of coverage the insured has;
- the type of loss;
- the insured's name, address, and telephone number;




4

4

1. Claims Investigation

Early and important facts to gather:

- the agent's name and address;
- the location of the loss;
- who to contact and how to contact him or her; and
- whether there is anything to which the adjuster should give special attention.




5

5

1. Claims Investigation

Keres, Practical and Effective Claims Management Techniques, IRMI 2006:

- "Claims should be dealt with on a constant and consistent basis."
- Have a claims plan
 - Written
 - Comprehensive



6

6

1. Claims Investigation

Keres, *Practical and Effective Claims Management Techniques*, IRMI 2006:

- Identify who will handle claims as they arise
- Begin the documentation process immediately...
- ...And segregate the claims file
- Be wary of early introduction of experts



7

7

2. Photographs, Narratives and Documentation

Photographs

- Make notations of the date, time and the photographer.
- Make notations as necessary of the memory card's or similar storage device's physical location throughout the storage time.



8

8

2. Photographs, Narratives and Documentation

Photographs

- Identify the scene and the shot angle in notes (i.e., cars in intersection, taken from the south looking northeast)
- Be prepared to answer the question: is this a true and accurate representation of the scene which it depicts?



9

9

2. Photographs, Narratives and Documentation

Blake, *How to Organize Information*, Expert Commentary, IRMI, 2002:

1. Chronological sequencing: What happened next?
2. The 5 W's and an H: Who, What, When, Where, Why and How
3. Priority sequencing: What needs to be dealt with first?



10

10

3. E-mail and Internal Documents

Blake, *Log Notes, E-mails and Bad Faith Lawsuits*, Expert Commentary, IRMI, 2003:

- "In a bad faith lawsuit, it's the claim file that is on trial."



11

11

3. E-mail and Internal Documents

- According to Blake, follow these rules when documenting a claim situation:
- Don't take sides in favor of the company or the claimant. Example: "Liability is bad; fortunately, we have a way to escape on a coverage issue."
- Related point – do not insert a subjective view of the claim.



12

12

3. E-mail and Internal Documents



- Don't
 - Air the Dirty Laundry
 - Throw a co-worker or colleague "under the bus"
- Example:
 - "I don't know why they didn't authorize the medical exam. That claims department has been known to be asleep at the switch."

13

13

3. E-mail and Internal Documents



- Don't overstate the description or effect of any given fact.
- Example:
 - "The claimant walked from the wheelchair to the TV." VERSUS
 - "The fraudulent claimant jumped out of his convenient wheelchair and walked over to the TV just fine."

14

14

3. E-mail and Internal Documents



- Don't resort to stereotypes:
- Blake's examples:
 - "Just doesn't want to go back to work."
 - "FLS."
 - Sexist, racist comments.

15

15

4. Insured's Statements



Zalma, *Claims in a Disaster*, Expert Commentary, IRMI 2005:

- "You may also be required to appear for an 'Examination Under Oath' (EUO)."
- "The insurer may, but is not required to, hire an attorney to take the EUO to represent the insured. Since a lawyer is not required, however, the insurer will not pay for the attorney that is representing you."

16

16

4. Insured's Statements



Zalma, *Claims in a Disaster*, Expert Commentary, IRMI 2005:

- "Do not refuse to appear at an EUO or the insurer may reject the claim because such refusal is a breach of a material condition of the policy."
- "You may reasonably request a delay in appearance at an EUO to obtain the services of counsel or a public insurance adjuster."

17

17

4. Insured's Statements



Zalma, *Claims in a Disaster*, Expert Commentary, IRMI 2005:

- "The EUO is a contractual obligation and there is usually no clause in the insurance policy promising to pay a lawyer to help the insured make a claim against an insurer."
- "You should not appear for an EUO until you understand all rights, the insurance coverage, and the full extent of the claim, or until counsel is retained."

18

18

4. Insured's Statements

Zalma, *Claims in a Disaster*, Expert Commentary, IRMI 2005:

- "The insurer may ask you to make available various documents related to the claim, including banking statements, investment reports, receipts, and other personal financial documents."



19

19

4. Insured's Statements

Zalma, *Claims in a Disaster*, Expert Commentary, IRMI 2005:

- "You are required to produce any documentation reasonably related to the insurer's investigation of the claim that can include tax returns.
- "In some states, tax returns are considered privileged and the insured cannot be compelled to produce them, while in other states the failure to produce tax returns is sufficient cause to deny the claim."



20

20

Key Concepts in Loss Settlement

Number One – "Actual Cash Value"

According to FC&S,

- Actual Cash Value, "means replacement cost of the property at the time of loss less depreciation" and
- It is "long accepted in insurance circles"
- It is also "the standard for determining the amount of insurance needed."



21

Key Concepts in Loss Settlement

Number Two – "Fair Market Value"

- Whether for tax purposes, real estate purposes, or insurance purposes, "fair market value" means
- The price that a willing seller would pay a willing buyer,
- neither being under any compulsion to buy or sell



22

Key Concepts in Loss Settlement

Number Three – The Broad Evidence Rule

- Everything's fair in love, war, and loss settlement, including
- Replacement cost, market value, obsolescence, available uses, expert testimony, and
- "any other factor tending to throw light on the subject."



23

Key Concepts in Loss Settlement


Number Four – Valued Policy Statutes and States

- Created by statutes; concept a century old
- Usually applicable to total losses
- Involving real estate and buildings
- Dictate that "the amount of insurance written...shall be taken conclusively to be the true value of the property...loss and damages." (Montana)



24

Key Concepts in Loss Settlement




Valued Policy States

Arkansas		Nebraska
California		New Hampshire
Florida		North Dakota
Georgia		Ohio
Kansas		South Carolina
Louisiana		South Dakota
Minnesota		Tennessee
Mississippi		Texas
Missouri		West Virginia
Montana		Wisconsin

25


Jefferson Insurance Co. v. Sup. CT.



- 1970 case in California
- Building has a market value of \$65,000...
- But an “actual cash value” of \$170,000...
- ...measured as replacement cost minus depreciation.
- Which one do we actually use?

26


Jefferson Insurance Co. v. Sup. CT.



- Because of co-insurance clauses, the insured argued for the LOWER value of \$65,000, rather than the HIGHER value
- The California court agreed with the insured, and interpreted the term “actual cash value” as being “fair market value”

27


Jefferson Insurance



- So, what is “fair market value”?
- According to the Court, “the price that a **willing buyer** would pay a **willing seller**, neither being under any compulsion to sell or buy.”
- And what’s its relationship to ACV?
- According to most courts, there really isn’t one...

28


Jefferson Insurance



- So, what’s the big deal?
- Courts will use a wide variety of factors in interpreting policies when it comes to adjusting losses.
- For the most part, if a policy doesn’t define ACV, courts tend to default to FMV, rather than replacement minus depreciation...

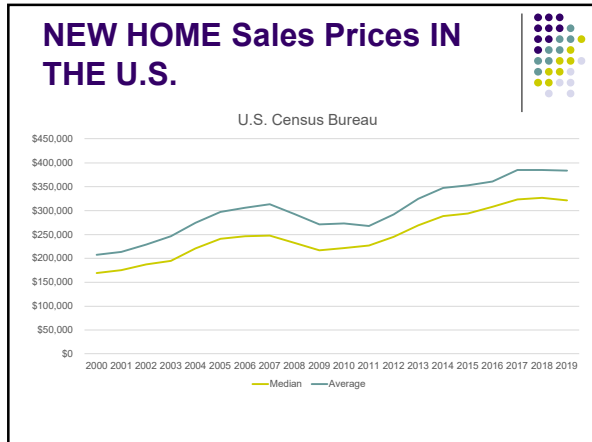
29

Jefferson Insurance

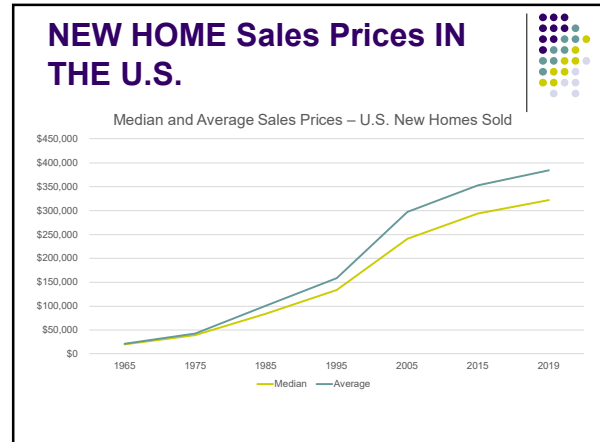


- Illinois tends in this direction...
- Though there is some agitation toward using the “broad evidence” rule to define ACV, rather than looking solely to FMC
- *The bottom line is to advise insureds in appropriate situations to review alternative valuation methodologies.*

30



31



32

- ### Standard Policy Language
- ISO Standard Farm Property Coverage Form
 - For "Farm Dwellings, Appurtenant Structures and Household Personal Property"
 - FP 00 12 09 03
 - Very complex rules for valuation of loss in the basic form...

33

- ### Standard Policy Language
- LOSS CONDITION – VALUATION
- The basis for loss settlement will be determined by the ratio of the Limit of Insurance applying to the destroyed or damaged Covered Property to its full replacement cost.

34

Standard Policy Language

The applicable Limit of Insurance	IS IT MORE THAN 80%?	IS IT LESS THAN 80%?
DIVIDED BY	<u>SMALLEST OF</u>	<u>LARGER OF</u>
The "full replacement cost" (Meaning cost minus excavation, foundation walls, etc.)	<ul style="list-style-type: none"> •Cost to replace •Cost to repair or replace the structure OR •The Limit of Liability 	<ul style="list-style-type: none"> •Actual cash value OR •The ratio of the limits to 80% of repair or replace

35

- ### Standard Policy Language
- Farm Endorsement FP 12 10 01 98
 - With respect to the "dwelling(s)" identified in the Schedule, and the private structures appurtenant to such "dwelling(s)", the Valuation Loss Condition applicable to Coverages A and B is replaced by the following:
 - In the event of loss or damage to Covered Property, we will settle at **actual cash value**, as of time of loss, of the damaged part of the building or other structure, but we will not pay more than the amount necessary for repair or replacement.

36

Standard Policy Language

According to FC&S:

- The ISO homeowners HO 00 03 also promises to settle personal property losses "at actual cash value at the time of the loss but not more than the amount required to repair or replace."
- Buildings, of course, are covered at replacement cost if the 80 percent coinsurance clause is satisfied and actual repair or replacement is completed.

37

Some "internal" Limits or sublimits

Water Limits / HO 04 95:

- We insure, up to \$5,000 [water] which
 - Backs up through sewers or drains; or
 - Overflows or is discharged from a:
 - Sump, sump pump; or
 - Related equipment;
- even if such overflow or discharge results from mechanical breakdown....

38

Some "internal" Limits or sublimits

HO limits on personal property coverage:

- \$200 on money, bank notes, bullion, gold other than goldware...
- \$1,500 on securities, accounts, deeds, evidences of debt...
- \$1,500 on watercraft of all types, including their trailers....
- \$1,500 on trailers or semitrailers

39

Some "internal" Limits or sublimits



HO limits on personal property coverage:

- \$1,500 for loss by theft of jewelry, watches, furs, precious and semiprecious stones.
- \$2,500 for loss by theft of firearms
- \$2,500 for loss by theft of silverware
- \$1,500 on [certain] electronic apparatus and accessories

40

Also, 5/11 form changes to the ho series

- **IPADS, IPODS, AND I-THINGS.** Electronic Equipment - Section I - Property Coverages, Coverage C - Personal Property's special Limits Of Liability was revised to:
- Introduce a \$250 sublimit for antennas, tapes, wires, records, disks or other media that are in or upon a motor vehicle...
- Remove the paragraph expressly providing a separate \$1,500 sublimit for electronic apparatus and accessories used primarily for business while away from the residence premises...
- Increase the \$500 sublimit for property away from the residence premises used primarily for business purposes to \$1,500.

41

A Side note: the matching problem

"An interpretation of the policy that left [the condo assoc.] with a horizontal or vertical striped effect on its buildings would not be reasonable. The better construction, and one certainly permitted by policy language that is ambiguous as applied to these facts, is that each building as a whole suffered direct physical loss as a result of the storm."

42

A side note: the matching problem

“The storm altered the appearance of the buildings such that they were damaged. Condominium buildings with mismatched siding are not a post-storm outcome that the insured was required to accept **under this replacement-cost policy.**”

Windridge of Naperville Condo. Assoc. v. Philadelphia Indemnity Ins. Co.
(7th Cir. August 7, 2019)

43

Errors and Omissions Issues

According to FC&S:

- It is important to emphasize that the commercial property and homeowners forms refer to actual cash value at the time of the loss.
- This may be quite different from the value at the time the insured acquired the property—and, in a period of rapidly rising or falling values, not the same as the value at the time the insurance was written.

44

Errors and Omissions Issues

- Inspect all premises to be insured prior to completing an application whenever possible.
- Have a regular method for recording your clients' insurance requirements.
- Use a checklist in reviewing required coverages and limits with an insured.
- Recommend outside appraisals or inspections when appropriate or when values are unclear.
- Refrain from advising clients in fields outside insurance, such as accounting or law.

45

Errors and Omissions Issues

- All expirations should be reviewed by the producer prior to renewal.
- Use a procedure for periodic review of all accounts consistent with the size and complexity of the risk.
- Review values and liability limits at each renewal.
- Check that required reports of value are made on reporting form policies. Review reports of value and audits for indications of risk change.

46

Errors and Omissions Issues

Valuation Disclaimers to Consider

- The value is for insurance purposes only. It is not necessarily reflective of any other value, including
 - Market value
 - Tax value
 - Lending or mortgage value
 - Cost to Replace

47

Errors and Omissions Issues

Valuation Disclaimers to Consider

- There are no warranties, expressed or implied, are provided for the data herein, its use, or its interpretation.
- Building data (such as age, square footage and composition) may be estimated.
- Comparative information, if used, may not be accurate or is useful as a general guide only.

48