



GarageGuys Tech Service Bulletin 041808

Some Dirty Little Claims Secrets

If you read the advertising promulgated by the insurance industry, you would think that the only thing that is standing between you and disaster is your insurance policy. You would also think that the only other thing standing between you and a payment in full from your insurance company after a disaster is how long it will take them to write your check.

Yeah right.

And if you think about the product that is being sold, it is pretty easy to understand why carriers foster these images: After all, if you weren't concerned about the risk of catastrophe (real or implanted by insurance advertising) the value of insurance is greatly decreased. So it is very much in the interest of the carriers (and yes, their agents and brokers) to keep the "threat level" at orange and the consumer's interest high.

This is all well and good. However the reputation of the insurance industry as concerns faultless claims handling is a somewhat spotty one—despite the fancy advertising. I say "spotty" partially because the industry has had some serious public relations disasters (Katrina—thousands of homeowners unable to collect a dime because of disputes about whether their houses were destroyed by "wind" which is covered or "flood" which isn't) but also because the industry has progressively taken a more legalistic approach to claims payment. This legalistic or nit-picky claims approach aggravates brokers and customers alike because it FEELS like (and sometimes is) a breach of the promise you thought you were made when you bought the policy.

Lesson 1: Even though the industry advertises that you are in "good hands" do not be surprised if your favorite insurance company assumes an antagonistic posture on your claim

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During 2007, I was personally involved in resolving no less than 15 claims situations—a personal record. Some of them were arguably questionable—but many were clearly instances of carriers adopting a stance which was clearly antithetical to the interests of their insured. And these were “name-brand” national carriers that you would think would be above this sort of thing. Let me tell you about one:

The background to this particular claim is the “pollution exclusion” which is contained in all liability policies. This exclusion was designed to prevent carriers from becoming involved in claims involving the release of “pollutants” and the subsequent clean-up and damages which can result. Normally, this exclusion has been applied judiciously over the years by most carriers however the language of this particular exclusion is necessarily loose—after all, what IS a pollutant? It depends upon the situation and the circumstances as you will see.

The facts were simple and uncontroverted: A woman filling her car at a self-serve pump alleged that her pump malfunctioned when she withdrew it from the fill and splashed her son with gasoline. The kid was rapidly cleaned up and had nothing more than a slight reddening of the skin to show for the incident. However, as you know, it is less and less likely for situations such as this to just pass. A lawyer was consulted and a claim constructed based upon the alleged malfunctioning pump.

The carrier after consideration attempted to deny the claim based upon the pollution exclusion: In other words, that the release of the gasoline from the hose was a pollution event as defined in the policy and thus would not be defended.

As a GarageGuy, we don’t mind carriers constructing novel defenses of our **insureds** in third party claims. In fact, we encourage defense rather than settlement in most cases. But the carrier was saying that they wouldn’t even defend the insured against this claim.

Clearly, the carrier was torturing the language and intent of the pollution exclusion in order to avoid their obligation to defend their insured.

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Lesson 2: When large companies delegate customer service to non-customer service related departments (legal, accounting, claims etc) unfair things are bound to happen.

In this case, a claim handler at the carrier, thinking about his year-end bonus no doubt, concocted this plan to excuse the carrier from its claims responsibility. The claim handler was clearly NOT thinking about how unfair it would be not to provide a defense to his gas station customer (who had paid for the policy) but instead was thinking about just closing the claim and saving himself some time.

I wrote a long letter about the history and purpose of the pollution exclusion to the claim handler and copied his boss.

After some emails back and forth, the carrier responded by standing by their original denial.

I then made a complaint on the insured's behalf to the State Insurance Department. After a wait of several months (yes, months) I was told that the State does not get involved in claims disputes regarding policy language.

OK.

In fact, this particular claim had a good outcome— but not for the right reason.

I prepared a letter to the insurance company which originally denied the claim detailing what I felt was extremely poor and really unfair claims handling when we realized that the attorney who brought the complaint on behalf of the woman had withdrawn the case—I would like to think in a fit of conscience.

I wish I could say that this incident is rare—but it is not, and is becoming more common. Carrier's interests and client's interests are supposed to be aligned but often are not. A good broker or agent can sometimes tip the scales in your favor through aggressive intervention but then, why should that be necessary?

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For those of you insured by "captive" agents (think Allstate, Nationwide or Universal) where the agent is actually an employee of the carrier, I think it is hard to understand how such an agent/employee could aggressively mount an effective campaign against his own carrier boss to correct such a situation without jeopardizing his job. I'd be interested in hearing any stories—positive OR negative—about your experiences like this.

Best Regards,

A handwritten signature in black ink that reads "Keith Friedlander". The signature is written in a cursive style with a small flourish underneath the name.

Keith Friedlander
President

GarageGuys—Insurance For Your Shop

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