INSURANCE WITH STEUARTS

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Editorial

Popular Maxim: "Brokers are on the front lines"

Some expect, or hope, that everything will get back to how it used to be. We believe that because of COVID-19 we entered a new era. Not only because of the economic crisis, but mostly because COVID-19 has the potential to create more permanent changes in customer perceptions and behavior. A number of COVID-19-related shifts in customer behavior are temporary, purely based on coping with the crisis, but other, more fundamental shifts are here to stay.

Although we know that the pandemic will eventually wane, a significant part of our new behavior will stick. Insurers that also want to be successful after the crisis have to understand this new behavior and turn this understanding into propositions and experiences that strike the right chord. They should start thinking ahead and reimagining the way they can stay relevant after the dust has settled.

COVID-19 presents a real opportunity for insurance brokers to deepen their relationships with clients. 'Brokers are on the front lines' when it comes to guiding customers through these challenging times.

But it's important to remember that insurance brokers, like all front liners, were also directly impacted by the challenges of the coronavirus, both in terms of personal emotional distress and through changes in their working lives. The public health crisis had upended the traditional brokerage model, forcing brokers to forego personal interaction with clients and adopt new ways of working that are contrary to their traditional instincts for human touch. At the same time they have highlighted the value

"Brokers need to remove a lot of the transactional stuff on their plates and adopt tools that enable them to focus on the relationships that make insurance really special.

It's all about building those relationships – and the post-pandemic is an opportunity for insurance brokers to deepen those relationships with quite a number of their customers through the challenging times ahead.

Brokers are on the front lines of helping people get their lives back in order – that's an essential role for them to play." Brokers need to keep up with technology that's coming out in order to meet the end-insureds' expectations around how they want to be serviced, and also the speed in which they're serviced. But now, more than ever before, I think the value of the advice, protection and expertise that brokers bring is irreplaceable."

M.Z.M. Nazim

Exclusion Clauses in Insurance Contracts

Exclusion clauses should be distinguished from other terms in the contract of insurance, such as conditions precedent and warranties. The purpose of an exclusion clause is to define, from the outset, the specific risks which will not be covered by insurers in any event under the policy.

Unlike some exclusion or exemption clauses in ordinary contracts, an exclusion clause in a contract of insurance is not usually designed to exclude, restrict or limit a party's legal liability. Rather, these clauses carefully define the boundaries of the risk to be insured by setting out what will 'not' be covered under the contract of insurance. While insuring clauses are often broadly worded for simplicity, exclusion clauses are often used as a tool to narrow the scope of coverage provided.

Exclusion clauses should be distinguished from other terms in the contract of insurance, such as conditions precedent and warranties. The purpose of an exclusion clause is to define, from the outset, the specific risks which will not be covered by insurers in any event under the policy. Conditions precedent and warranties, on the other hand, will only affect the scope of cover when they are breached by the insured. Under the Insurance Act 2015, breach of a condition precedent or a warranty may have the effect of discharging the insurer's liability or suspending cover under the policy.

The Purpose of Business Insurance Exclusions

Exclusions are provisions in business insurance policies that eliminate coverage for certain types of property, perils, situations, or hazards. Risks described in exclusions aren't covered by the policy. Insurers utilize exclusions to remove coverage for hazards they're unwilling to insure.

Reasons to Exclude Risks

Catastrophic Events

Some risks are uninsurable because they are catastrophic events. An example is war. If a war breaks out and a bomb damages your business property, your commercial property policy won't cover the loss. Virtually all property policies exclude damage caused by war and military action.

Some catastrophic events can be insured by specialized coverage. Examples are floods and earthquakes.

Covered by Another Policy

Many risks are excluded under one type of policy because the same risks are covered by another policy. For instance, auto liability claims are excluded under a General Liability Policy because they are covered by a commercial vehicle insurance policy. Similarly, liability and vehicle insurance policies exclude any benefits the employer is obligated to pay under a workmens' compensation law since such benefits are covered by workmens' compensation insurance

Maintenance Issues

Some risks, such as wear and tear, are excluded because they are naturally occurring events that can be controlled by the policyholder through proper maintenance. Damage caused by wear and tear is excluded from both commercial/business policies and motor insurance. Other

risks that can be controlled through regular maintenance are rust, corrosion, and insect infestations

Against Public Policy

Many insurance policies exclude crimes, violations of the law, and intentionally caused injuries because insuring them would be against public policy. For this reason, liability policies don't cover claims arising from the insured's intentional, harmful acts like firing a gun or committing fraud.

Some exclusions can be eliminated if you're willing to pay an additional premium.

Where to Look for Exclusions

An obvious place to look for policy exclusions is under the section titled "Exclusions." Many policies contain more than one list of exclusions. For instance, the standard business insurance policy contains exclusions for property and another for liability. Some policies also contain a separate list of exclusions that apply to all coverages.

Many policies contain one or more sections entitled "limitations". A limitation is a partial exclusion and narrows the scope of coverage for a covered risk. For instance, theft is a covered peril under the standard business owners policy, but theft losses involving furs, jewelry, and other valuable items are subject to a specified maximum limit.

Alternate Locations

Exclusionary provisions are also found in other parts of the policy, not just the Exclusions section. One of the most common places for them to appear is in the policy "Definitions." Insurers define terms to attach specific meanings to them and narrow the scope of interpretation.

For example, Heavy equipment like cranes, forklifts – a broad array of machinery and equipment, whilst insured at site are excluded for travel on public roads. Additional Premium will cover any damages or injury to Third Parties whilst on public roads.

Another place where exclusions can be found is in the policy "Conditions" section. For instance, the standard business auto policy contains a provision that essentially excludes accidents that occur outside the defined "coverage territory or geographical limits. This provision appears in the general Conditions section, not the Definitions.

Finally, many insurers add exclusions to policies by attaching "Endorsements" to preprinted forms. An endorsement may add a new exclusion or modify an existing one.

What does "special" mean in insurance?

The most expansive form of insurance coverage is Special Form. In policies that use the special form type of coverage, instead of the perils covered being stated, the Exclusions are listed. In other words, unless the policy states a peril isn't included, it's included and your potential loss is covered.

Parts of an Insurance Policy

When buying an insurance policy it is important to know what you're paying for, what your obligations are, and what is and isn't covered.

Insurance Policy Declarations and Definitions

The declarations page identifies the general who, what, and when of your insurance policy. It will specify who is insured, such as all the drivers in your household. It tells you what property or risks are covered and what the policy limits are. And to help you better understand the insurance contract, the definitions section explains the key terms used within the document.

Insuring Agreement and Conditions

Next, the insuring agreement tells you in more detail what the insurance company promises to do or cover under the insurance policy. For example, the insurance company may agree to pay for the losses associated with a natural disaster, to defend you in a liability action, or pay for specified services, such as medical care.

The following are the two key types of insuring agreements:

a. Named-Perils Coverage: Only the perils specifically listed in the insurance policy are covered.

b. All-Risk Coverage: All risks and losses are covered except for those specifically excluded in the insurance policy.

Similarly, the conditions part of the policy describes your obligations under the agreement. If you don't abide by these conditions, your insurer may be able to deny coverage that they would otherwise provide under the policy. Common conditions require you to file claims within a certain amount of time, cooperate with the insurer in a liability lawsuit, and mitigate additional damage under a property damage policy.

Insurance Policy Exclusions

The exclusions section of an insurance policy is also very important. It describes property, losses, causes of losses, or perils that are not covered. If you only read the policy declarations page and the insuring agreement, you may think you are paying for coverage that you don't actually have. For example, many home owners policies exclude coverage for damage due to floods and earthquakes. And life insurance policies will often exclude death due to suicide or an act of war.

Insurance Policy Endorsements and Riders

Sometimes an insurer will change the wording, terms, or scope of your insurance plan, for example when you renew your policy at the end of the policy period. This might be done through an endorsement or rider to the policy, both of which are legally binding amendments to the original contract. For example, an inflation rider on a title insurance policy adjusts your insurance coverage amount to reflect the increase in the value of your property over time. It's important to read all endorsements and riders your insurance company sends you to know exactly how your coverage has changed.

Get Help Protecting Your Insurance Rights

If you've been paying your premiums, you expect your insurance to come through for you when you need it most. Unfortunately, some insurance companies will try to deny coverage based on confusing terms in the insurance policy. If your insurer has denied your claim or seems to be acting in bad faith, contact your insurance broker who can explain your policy and help defend your insurance rights.

Business English Vocabulary

Keep me in the loop

"Keep Stuart in the loop when discussing the merger, please."

Keep me in the loop on decisions about the targets for the next quarter.

To "keep me/her/him/them in the loop" means to keep someone involved and updated about developments in a project.

It comes from "looping" someone into an email chain — that is, cc'ing them into the digital conversation. You can "keep someone in the loop" by informing them of what happens in meetings, and alerting them when decisions are made.

Case Law

Fabrique Innovations, Inc. v. Federal Insurance Company

Goods Lost to Chapter 11 Closing Sale, Resulting "Sue and Labor" Expenses, Covered Under Ocean and Inland Marine Policy, According to Second Circuit Court of Appeals

In April 2021m the United States Court of Appeals for the Second Circuit upheld the Southern District of New York's award of over $2 million to policyholder, Fabrique Innovations, Inc., against its ocean cargo insurance carrier, Federal Insurance Company.

Federal issued an "all-risk" ocean cargo insurance policy to Fabrique for fabric and plush merchandise "temporarily in storage" at a warehouse owed by Hancock Fabrics. Fabrique's goods were lost when Hancock liquidated its holdings—including Fabrique's merchandise—as part of Hancock's bankruptcy proceedings. Following the loss, Fabrique filed a claim under its policy with Federal. Federal denied the claim, citing various exclusions, including an exclusion for "loss, damage or expense caused by or resulting from willful misconduct, fraud or deceit," which the insurer argued was triggered due to Hancock's sale of the goods in violation of the parties' third-party logistics agreement.

The Second Circuit affirmed the lower court's ruling in favor of the policyholder, concluding that the loss of goods was covered under the policy by virtue of an endorsement, stating that Federal would "pay for direct physical loss or damage to merchandise in transit caused by or resulting from a covered peril while such merchandise is temporarily in storage. . . in anticipation of transit." The policy defined "merchandise in transit" as "business personal property" belonging to Fabrique that was "shipped by or consigned to others for [Fabrique's] account" in "intracompany shipments." The court applied the common everyday meaning of "intracompany shipments" to include Fabrique's goods because they were shipped and stored at the Hancock's warehouse. Thus, the court agreed that the plain language of the policy covered the goods lost in the closing sales.

The court also rejected Federal's reliance on the willful misconduct exclusion under the well-settled principle that the insurer carries the burden to demonstrate that its interpretation of the exclusion is the only reasonable construction. New York law requires that "willful acts" be tortious in nature, extending "well beyond" a simple breach of contract. Because Hancock's liquidation of its holdings was merely intentional nonperformance of a logistics agreement rather than truly culpable, harmful conduct, as the court reasoned, the court found that the exclusion for willful misconduct did not apply.

In assessing the amount of covered damages, the Second Circuit also rejected Federal's argument that the award for Fabrique's "sue and labor" costs in litigating its claims in bankruptcy court should be reduced pro rata for Fabrique's recovery of lost profits. The court again turned to the plain language of the policy, which included "sue and labor coverage" for "charges reasonably incurred" in the policyholder fulfilling its duty to take "all reasonable measures to avert or minimize loss or damage." Fabrique's sue and labor expenses fit within that definition because they were a direct result of its loss of goods and saved federal money on storage coverage obligations, such that the insurer and not the policyholder should bear the costs of those savings.

The Fabrique decision highlights two important principles. The first is that, to deny coverage based on an exclusion, an insurer must show not only that the exclusion applies in a particular case but also that its preferred interpretation of the exclusion is the only reasonable construction.

Thus, in the case of Federal's "willful conduct" exclusion, the insurer carried a heavy burden to establish truly culpable conduct beyond intentional nonperformance of a contract, even if such nonperformance is motivated by financial self-interest.

Second, policyholders should not underestimate the value of coverage grants permitting recovery of loss mitigation expenses, such as the "sue and labor" provision at issue in Fabrique. Companies may be familiar with standard property insurance provisions regarding "duties in event of loss," which often include duties to provide timely notice and to take reasonable steps to minimize loss. However, the policy may also reimburse the policyholder for all expenses, including litigation expenses, in connection with those loss mitigation efforts, which can be a valuable asset protecting policyholders that vigorously fight to preserve their rights in the event of a loss.

Global News

UK

Danish insurer in UK goes bankrupt

Gefion Insurance A/S (Gefion) is an insurance firm authorised and regulated by the DFSA.

It operated in the UK on a freedom of services basis which means that some customers, both individual and small businesses, based in the UK have held policies with the firm. Gefion sold a range of motor insurance products in the UK through a network of Managing General Agents (MGAs).

In June 2020, the DFSA withdrew Gefion's licence to operate. This meant that Gefion was unable to underwrite any new policies from that date but claims arising under existing policies continued to be paid.

The UK's Financial Services Compensation Scheme ('FSCS') has also declared Gefion to be in default.

The Danish Financial Supervisory Authority (DFSA) has announced that Gefion has been declared bankrupt. Although there are no remaining live policies in the UK, claims may still be made against Gefion policies, and a number of previously-submitted claims currently remain unsettled, the UK regulator Financial Conduct Authority said in a statement on 7 June 2021

First UK Insurer to offer a free LeakBot to their buildings insurance customers

Home water leaks are 'a thing of the past'

Hiscox, the first UK insurer to partner with LeakBot to offer buildings insurance customers a free leak detector service. The UK home insurance market has seen a significant increase in claims from water damage over the past few years and they want to help customers prevent the damage and disruption this can cause.

LeakBot is an end-to-end claims mitigation system, specifically designed to monitor escape of water in the home. It also provides a 'find and fix' service to remedy water pipe leaks once the LeakBot device has alerted policyholders to the presence of a leak.

Japan

New System in Evaluation of Flood Risk Management

Major disasters cause loss of life and serious disturbance to livelihoods. Integrative and innovative risk management is needed to reduce the impacts of such a disturbance. To pursue this, a better understanding of the current level of disaster risk management is indispensable. Following this line of thinking, the present work was intended to evaluate the various aspects of flood risk management in Japan using a recent case of major flooding that occurred last autumn as a result of a major storm. The focus was on the vulnerability assessment for the disaster-stricken area using various kinds of information including topographic features, land use, flood warning system, evacuation behavior, levee structure, insurance system and government support for recovery. Such an integrative assessment shed new light on vulnerability-generating mechanisms. In particular, it found that the disaster-stricken area has a high level of coping capacity related to flood disasters. However, the high level of coping capacity hinders the reduction of susceptibility to the impacts of flooding. Based on this finding, a new, simple but operational vulnerability management framework was proposed, which may help decision-makers prioritize actions for vulnerability reduction.

India

Pandemic pushes sales of 1 crore health covers Insurers are upselling health insurance to customers by skewing their pricing in favour of high-value policies. A Rs. 1 crore (10 Million) health insurance cover is available for as low as Rs. 18,000 for a 30-year old. As a result, a third of all health insurance premiums is now coming from the sale of high-value policies.

Food For Thought

If you remain loyal to upstanding Values, Purpose and Identity, your strength of character will shield you from those who would try to manipulate you or take advantage of you.

Definition: Risk assessment

Risk assessment, also called underwriting, is the methodology used by insurers for evaluating and assessing the risks associated with an insurance policy. The same helps in calculation of the correct premium for an insured.

Description: There are different kinds of risks associated with insurance like changes in mortality rates, morbidity rates, catastrophic risk, etc. This assessment is implemented through various techniques like: simulation, parametric, stress testing, deterministic, benchmarking, stochastic models - is a form of financial model that is used to help make investment decisions. This type of modeling forecasts the probability of various outcomes under different conditions, using random variables, etc.

What Is Term Life Insurance?

Term life insurance provides coverage for a specific term or period of time, which might be short as in a year or two, or it could be as long as 20 or 30 years. If you die while term life insurance is in place, your policy delivers a payout to your beneficiaries. If you don't die during the term of your life insurance, no payout will occur. Many term life insurance policies have policies about the maximum issue age, eliminating older people from getting this type of coverage.

Types of Term Life Insurance

You have a few different types of term life insurance to consider.

Level term policies offer coverage for a specific period of time. Your premiums and death benefits are fixed, meaning they don't change. This type of policy is priced so the premium reflects rising costs over the term, so premiums are often higher.

A yearly renewable term policy renews each year without a specified term. Your premiums will be lower in the beginning, but they'll increase as time passes. Many people opt to discontinue this type of insurance eventually, because the premiums get too high.

Decreasing term insurance offers death benefits that get less with each passing year. You pay a fixed premium for the term of the policy for less payout.

Misrepresentation and its consequences

A misrepresentation occurs when:

1. An untrue statement of fact or law is made by one party (A) to another party (B);

2. That untrue statement induces B to enter into a contract; and B suffers loss as a result.

The various types of misrepresentation are:

Fraudulent misrepresentation

Fraudulent misrepresentation will occur when a false representation is made and the party making the representation (A) knew it was false or was reckless as to whether it was true or false - the lack of an honest belief in its truth will make it a fraudulent one.

Negligent misrepresentation

A negligent misrepresentation under the Misrepresentation Act 1967 (MA 1967) occurs where a statement is made by one contracting party to another carelessly or without reasonable grounds for believing its truth. The test is an objective one.

There is no requirement to establish fraud. If the innocent party can prove the statement was in fact false, it will be for the maker of the statement to establish that it reasonably believed in the truth of the statement (that is, the representation).

A remedy for negligent misrepresentation does remain at common law, however its use in contractual situations has been greatly diminished as a result of section 2 (1) of the MA 1967.

Innocent misrepresentation

Only a misrepresentation made entirely without fault can be described as an innocent misrepresentation.

If A is unable to show it had reasonable grounds to believe its statement was true the misrepresentation will be fraudulent or negligent.

Transportation of Hazardous and Noxious materials by Land and Sea

Transporting hazardous material by sea

Even with proper stowage and securing, factors such as heavy weather and rough seas have sometimes resulted in the loss of containers from ships. Efforts to recover the lost containers and mitigate damage arising from the containers and their contents can be time consuming and difficult depending on where the containers are, for example, afloat or on the seabed, etc.
It has been apparent from the media reports of recent significant incidents that there may be some confusion and misconception about the shipping industry's liability for the response costs, and the extent of shipowners' third party liability insurance cover for such costs. An international comprehensive framework of strict liability (i.e. regardless of fault) and compensation conventions has been agreed by the International Maritime Organization(IMO)to ensure that valid claims for pollution and other damage from ships are met promptly without the need for time consuming and costly legal action. In order to ensure that claimants have access to compensation for the costs associated with the recovery of containers lost overboard from ships at sea, and damage arising from the containers or their contents.

Transporting hazardous materials by road

Transporting hazardous materials by road, is an activity that raises special risks, which is why there is a special insurance policy for the transportation of hazardous materials. Depending on what cargo you haul, the world over have different regulations

Transportation of hazardous materials causes unique highway safety concerns. One of these concerns is the release of cargo that may contaminate or injure those coming in contact with the hazardous substance. These crashes may also cause fires, explosions and the release of toxic fumes. Imagine the cost of clean-up and other damages that could occur if a tanker full of hazardous materials were to explode on a busy highway. Now, try to imagine covering these costs without insurance.

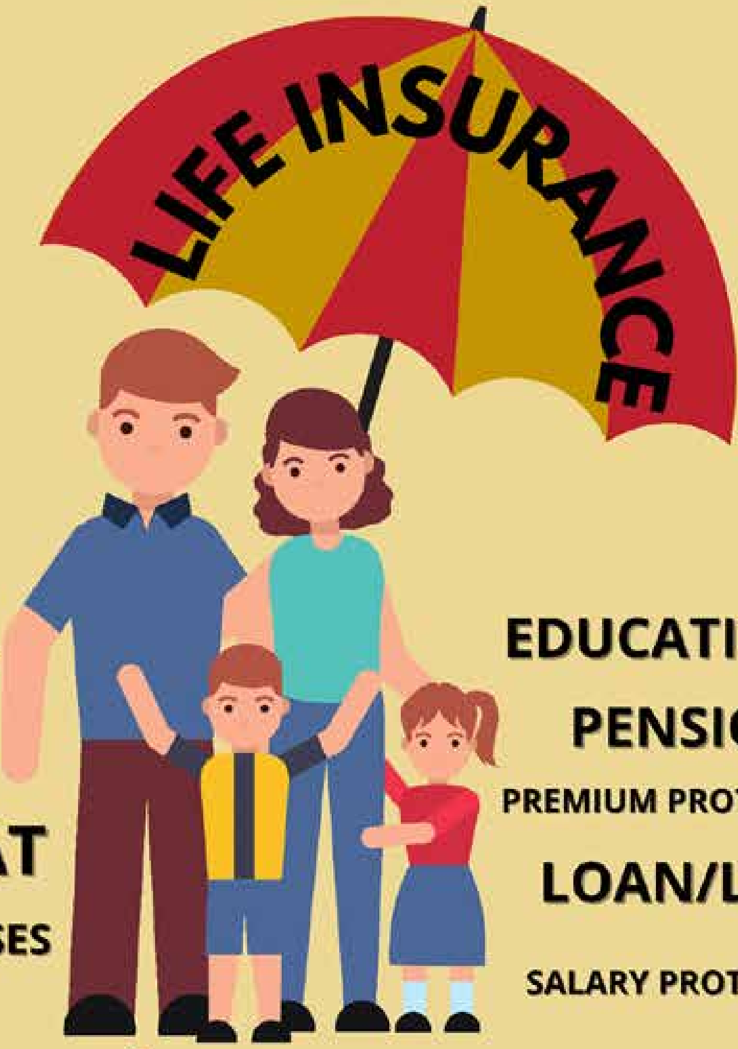
The transportation of hazardous materials insurance policy can cover liability against:

Loading and Unloading Cargo; In-transit Coverage; Site Pollution; Clean-up Operations and On-Going Contamination

Humour

Wife: "Did you ask your boss for a raise?"
Husband: "Yes"
Wife: "What happened?"
Husband: "He was like a lamb."
Wife: (Excited) "What did he say?"
Husband: "Bah"

COME UNDER OUR UMBRELLA



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