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The Significance of
Underwriting in the
Claim Process

By Aaron Simon



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Many people think that underwriting activities and claims activities are completely distinct processes. This is not true. In claim and litigation situations the underwriting file is often an important and significant item. As a litigator when I am involved in defending an insurance agent in an errors and omissions claim or representing an insurance company in a coverage action, one of the first things I request to review is the associated underwriting file. Notably most of my opposing counsel do the same thing. Hopefully, the underwriting file will contain information that will help me defend my client (such as notes regarding communications with the insurance customer on what the insurance customer wanted or did not want that are consistent with the insurance product sold to the insurance customer). Regardless, there is often a vast amount of factual data and information in an underwriting file that is typically very important for an attorney or claims professional to know in a claim situation.

To take a step back, the underwriting process is typically a collaboration between an insurance agent and an underwriter at an insurance company. Sometimes multiple underwriters at multiple insurance companies are used to obtain a desired insurance product for an insurance company. Sometimes an insurance broker is used as well. Nevertheless, the distilled process involves an insurance agent collecting information from the insurance agent's customer and relaying this information to the underwriter. The underwriter then decides whether or not to issue the insurance product, or will request additional information from the insurance agent. The process can vary widely depending on the insurance product and insurance customer involved.

However, the focus in underwriting tends to be to get the insurance product issued for the insurance customer within the parameters of what insurance products an insurer is willing to issue to a certain insurance customer. Unfortunately since many people do not recognize the potential connection between an underwriting file and future claims and litigation, there is sometimes not enough care taken in making a full and complete underwriting file. Sometimes short cuts are taken or assumptions are made in the underwriting process. In addition, some insurance companies do not require significant information in regards to underwriting, and some insurance companies give significant binding authority to the insurance company's appointed agents. In the latter case, the insurance company is expecting the insurance agent to make sure the agent is strictly following the insurance company's underwriting guidelines. If an agent does not follow the insurance company's underwriting guidelines and binds an insurance company to an unacceptable risk this creates significant errors and omissions exposure for the insurance agent. This can be particularly problematic when insurance companies frequently modify and revise underwriting guidelines.

It is highly likely that if a claim arises your underwriting actions as an insurance agent will be scrutinized. Thus, make sure care is taken when performing underwriting actions. As always documentation is key, so make sure to fully document all your underwriting activities and communications. This is particularly the case when you are involved in complex or unusual underwriting situations. Also, as much as possible, make sure you as an insurance agent are familiar with the underwriting guidelines of the insurance companies with whom you are working.



Aaron Simon is a litigation attorney with the law firm of **Brownson & Linnihan, PLLP**. He is admitted to practice law in Minnesota and Wisconsin. A focus of Mr. Simon's practice is defending insurance agents and agencies and handling insurance coverage cases in state federal courts. Mr. Simon is a member of the Minnesota State Bar Association, the Wisconsin State Bar Association, the Minnesota Defense Lawyers Association, and the Defense Research Institute and the Professional Liability Underwriting Society. To learn more about Aaron, go to

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