Reflections from a post-wildfire Local Assistance Center

Over the past month, UP has been engaged with recovery efforts for the Valley and Butte Fires. I and other staff members and volunteers have sat across the table from countless fire survivors who lost everything, trying our best to give them some hope that they will be able to recover. Their emotions range from cautiously optimistic to something resembling PTSD. I am deeply moved by the plight of the victims (survivors) and it is a great honor to be able to help them. In general, the people that I talked to were grateful for our organization's guidance and support. UP's nearly quarter-century of experience helping disaster survivors with the insurance claims process puts us in a unique position to offer a novel service to Lake and Calaveras County policyholders.

In "peacetime" as we say, when there is not a major recovery underway, UP devotes significant resources to its preparedness and advocacy programs. As the staff attorney, I am responsible for managing our legislative/regulatory advocacy and the Amicus Project. Through the Amicus Project, UP is able to weigh in on behalf of insurance consumers who are in litigation with their insurance company. Many of these cases involve homeowners, like the ones in Lake and Calaveras Counties who lost everything, battling for their full policy benefits after the insurance company has denied their claim. UP's unique experience and expertise sometimes (we wish more often) make a difference in the outcome and the homeowner gets the insurance money they need to recover.

However, some of the cases we weigh in on involve complex commercial coverage disputes with decidedly less sympathetic plaintiffs who already have armies of lawyers. The main reason we participate in these types of high profile coverage cases is because the truth of the matter is the outcome of those cases affects policyholders of all stripes. Individual homeowners, for example, rarely have the legal firepower necessary to take their coverage disputes to the high courts where law that governs their claims gets made. That's also why UP is active at the American Law Institute (a group of law professors and lawyers that write treatises for courts to use) and in other forums. From the duty to defend, to the compensation of injured plaintiffs, to cleaning up toxic waste sites, to the duty of good faith and fair

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dealing, insurers and insureds alike are bound by decisional law.

Recently, in one such case, UP weighed in to support a bank that was involved in a dispute with its professional liability insurer over whether its insurance policy covered a settlement it reached in a class-action lawsuit involving overdraft fees. The insurer decided it did not want to cover the settlement, yet its policy clearly did. In an effort to escape liability (and to make a precedent for future cases) the insurer argued for a strained interpretation of its exclusions. The lower court didn't buy their argument and issued an order in the bank's favor. UP weighed in on the appeal, asking the appellate court to uphold the lower court. The reasoning was simple: if an insurance company wants to exclude a risk, it has to say so in its policy. It cannot decide at claim time that it made a mistake and ask for a court's blessing. Regardless of the underlying facts or who the parties to the case are, a rule to the contrary, we felt, is bad public policy.

So again, why did UP care to weigh in on behalf of a bank? After all, the bank was represented by experienced policyholder counsel. The reason is simple: the insurer was asking the court to rewrite its contract at the expense of the policyholder who bought and paid for the coverage. In this case, the coverage was for a settlement in a lawsuit, but imagine the insurer tried to do the same thing to a Valley or Butte fire victim? "Sorry, we've decided that we no longer cover wildfires that meet XYZ criteria, even though that's not what the policy says." In the law, we call that a breach of the policyholder's "reasonable expectations." The "reasonable expectations" doctrine protects a policyholder from arbitrary claim denials that are not justified by the insurance contract. If the appellate court was to decide in the insurer's favor, it would set a dangerous precedent that would be harmful to all policyholders.

But there is another dimension to this particular case and why I decided to blog about it. When UP sought permission to file a brief in support of the policyholder, the insurer objected. When we motioned the court, we received a scathing opposition that accused our organization of "[creating] a false impression that the case involves a principled need to protect policyholders or something more than a multi-billion dollar bank trying to keep the benefits of its unwholesome overdraft scheme" and the our "website is a referral organ intended to drive policyholders looking for help to what outwardly appears to be an impartial site." These statements were incredibly misleading and ultimately led the court to deny our participation in the case.

This irked me for a few reasons. First, these statements are not true. What is true is that we do really care about the outcome of these cases for the reasons discussed above. What is also true, is that our

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organization guides people through the insurance claims process so they do not have to hire professional help. Our bylaws actually state the goals of the organization as being to serve as a self-help resource for insurance consumers and to reduce related litigation. Provided a consumer is not looking for legal advice (rare) we do our best to help them through the resources available in our Claim Guidance Library. And when disaster strikes, we put boots on the ground and go face-to-face with those in need, side-by-side with other non-profit organizations and agencies whose sole focus is to help people recover. I and other staff members and volunteers have spent the last two weeks doing exactly that. In doing so, our goal is never to create a dispute where none exists or to encourage a policyholder to hire a lawyer.

The insurer's scathing opposition also irked me because of what it said to me about a lack of civility in the profession. I am not a litigator so I am not used to courtroom dynamics and hardball tactics. I am a paperwork lawyer, I write briefs and articles, and blog, like here, about legal developments and what our organization is doing to move the ball forward for policyholders. Reading the opposition was jarring, since in almost every case, insurers welcome our participation and if they oppose our brief, it's on the merits rather than by attacking the credibility of our organization. It also surprised me since I am engaged with the American Bar Association and other professional organizations where I sit on committees with policyholder advocates and insurers alike. The discourse is extremely cordial and there is an incredible amount of collaboration that occurs.

UP is also strategic about where it gets involved. It evaluates the merits of each case and in many cases, decides the insurer's coverage position is correct or that the policyholder is asking for something unreasonable. Of the hundreds or thousands of insurance coverage cases that go up on appeal each year, we've only weighed in on 400 or so in nearly 25 years, so we clearly pick an choose our battles wisely. We pick the cases that we think will have the most impact (like here) or where we think the policyholder really needs our help. As an organization, we pick our advocacy priorities in a similar way, always mindful of where we can build alliances "across the aisle," so-to-speak, and of civility. In any event, we'll keep on doing what we do best – helping victims of the wildfires (we call them survivors) on the road to recovery.

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