

LOOK BEFORE YOU LEAP OR FACE DISCIPLINARY SANCTIONS

Why you must fully understand the file before taking action.

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This article is based on actual cases that were brought before the syndic. It is designed to help you reflect on the quality of your professional practice, specifically with respect to your ethical obligations.

The Complaint

A claims adjuster hired by an insured blows the whistle on a young colleague employed by an insurer. It seems that this adjuster harmed his client's interests by using false pretences to reduce the compensation she should have received.

The Facts of the Case

The insured is the owner-occupant of a duplex. She lives in one flat and rents rooms in the other to students. Upon returning from a week-long Christmas vacation, she sees that major water damage has occurred in the upstairs flat, which had also been empty during her absence, the students having gone home for the holidays. It should be noted that this is the first time the insured, an elderly woman, has ever made a claim.

One month after filing her claim with the insurer, the insured hires a public claims adjuster to assess damages to the building and quickly settle this part of the claim with the insurer's claims adjuster. The adjuster hired by the insured then attends to assessing her "personal property" and "rental income" losses.

However, when the contractor the insured has hired notifies her that he is about to begin demolition, the insured panics, loses trust in him and refuses to allow the work

to proceed. She also terminates her public claims adjuster's mandate, believing that he was behind the decision to carry out the demolition. Meanwhile, the insurer's claims adjuster is on vacation.

The insurer's claims adjuster is unaware that the insured is feeling so insecure. He settles the loss in accordance with the claims for payment submitted by the public adjuster. However, when it comes time to finalize the rental income loss, he informs the insured by e-mail that he is reducing the payment by seven weeks since she had engaged the services of a public adjuster and this had delayed the settlement.

The Ethics Investigation

During the investigation, the insurer's claims adjuster sees that the delay in rebuilding was not due to the public claims adjuster, but rather to the fact that the insured had misunderstood that certain walls and cupboards had to be demolished in order to install new ones. During this whole period—which lasts longer than expected—the rental unit is of course uninhabitable.

The Formal Complaint¹

I was responsible for filing a formal complaint against the claims adjuster employed by the insurer; it consisted of the following charge:

On May 13th, neglected to fairly settle the insured's claim for water damage that occurred [...] in January by asserting that he had had to reduce the amount of the claim for loss of rental income by the number of weeks during which the public claims adjuster had acted as the insured's mandatary, since the adjuster's presence had delayed the settlement of the file.

The burden of proof I presented included the opinion of a claims adjuster employed by another insurer; the discipline committee accepted this as an "expert's report". The committee ruled that during the

period in question, the respondent did not put any pressure on the insured to start the renovations. He therefore should not have deducted seven weeks of loss of rental income from the settlement.

The Discipline Committee's Ruling

The claims adjuster employed by the insurer pled guilty to the charge against him. Furthermore, while he was going through the disciplinary process, the insurer voluntarily compensated the insured for the seven weeks of lost income denied to her by its claims adjuster.

In its decision on sanction, the discipline committee established that "*evidence was also produced showing that the respondent was a young professional*". His "*ill-conceived act and the manner in which it was implemented by rashly sending an e-mail have led to his appearance before the Committee [...]*". [unofficial translation]

Furthermore, the committee added that "*With respect to compensating the insured [for the additional amount equal to the seven weeks of loss of income originally deducted], the Committee must mention that it has no statutory authority to order that compensation be paid since disciplinary remedies are independent from remedies generally imposed by the civil courts.*" [unofficial translation]

Conclusion

Before acting, it is essential to understand and maintain control over all aspects of the file. Acting quickly does not always equal acting professionally.

1. Formal complaint number 2007-12-01 (E)

