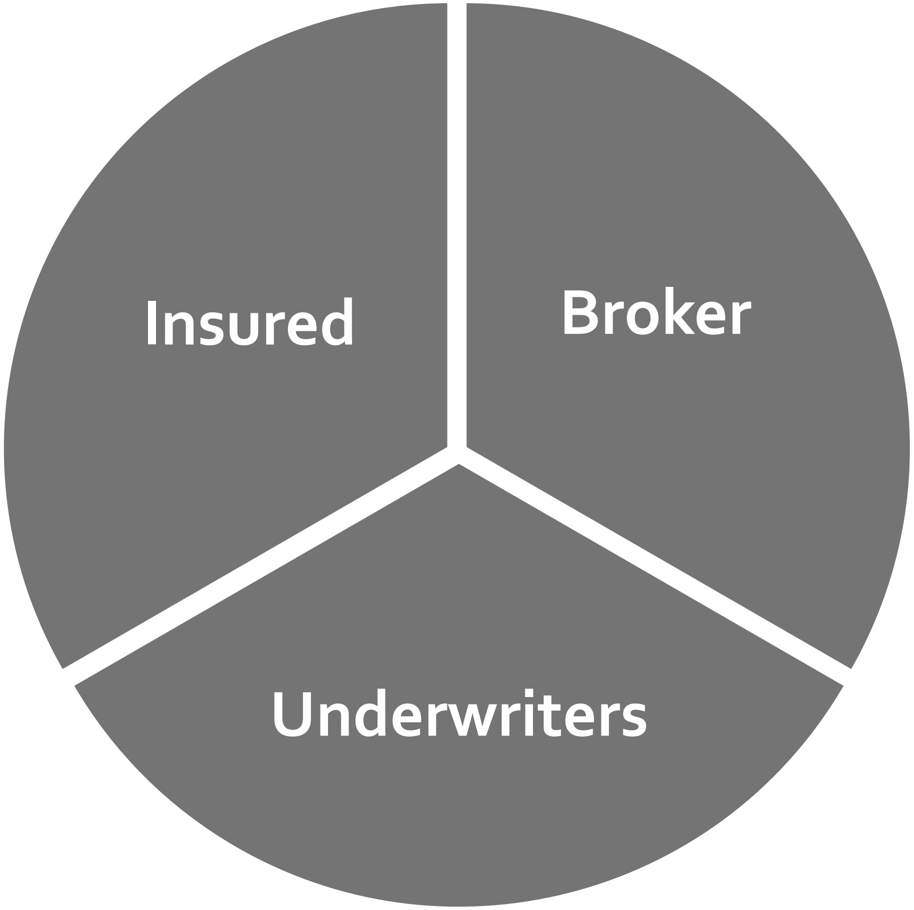
COMMUNICATION IS THE KEY

A COOPERATIVE APPROACH TO POLICY DRAFTING FROM THE ADJUSTER'S PERSPECTIVE

The Insurance Relationship



The Players

- Insured – The party needing and requesting the insurance. Usually, the insured will enlist the services of an insurance broker to evaluate all of their insurance needs and to work on their behalf.
- Risk Manager – The professional within the insured's organization usually responsible for the procurement of insurance.
- Broker – The licensed insurance professional who will counsel the insured and market the requests for coverage with the various insurance markets. It is important to note that in most cases the broker is the agent of the insured, and not of the Underwriter, which can have important legal ramifications. The Broker is the middle player in the underwriting process.
- Underwriter/ Insurance Company – The corporate entity that issues the insurance policy and agrees to indemnify the insured for their covered losses.

The Underwriting Process

- This is the critical process where the policy terms, conditions, coverages, valuations and premiums are negotiated.
- There should be three critical discussions:
  - the insured discloses to their broker all of their required coverages, shipping practices and needs, and
  - The broker relays this to the Underwriter and ensures that the policy and amendments accurately reflect the needs of the insured
  - Specialized or customized coverages can usually be negotiated and added to the base policy by amendment
- If the shipper/insured is purchasing insurance through the carrier and declaring a value for the consignment, the shipper should understand the terms and conditions of the policy, not just the limits. Many policies issued by carriers are for minimum cover terms only and there can be surprises. Obtain a copy of the underlying policy, or at least a summary of terms and conditions, and read and understand the terms. If anything is unclear ASK QUESTIONS!
- ALWAYS READ THE POLICY TO AVOID SURPRISES!

Case Example One
Broker Misunderstanding

- Insured is a food distributor in the northeast with customers throughout the US as well as worldwide
- The broker discussed the application with the Underwriter and approved a quote which covered domestic shipments only as the premium was significantly lower than for international coverage
- The insured was unaware of the geographic restriction on the policy and continued with their usual business
- A container of frozen beef was shipped to Dubai via vessel which arrived thawed and partially spoiled and it was determined that the reefer malfunctioned during ocean transit
- The lack of coverage was identified through a reservation of rights letter to the great surprise of the insured
- Discussions ensued between the broker and Underwriter and the policy coverage was amended to reflect the business practices of the insured

Case Example Two
Coverage Misunderstanding

- The insured is a seafood distributor in the southeast US whose facility was affected by Hurricane Matthew and the aftermath
- The insured's facility, as well as many of their customers' facilities were closed and inaccessible during and after the storm with deliveries stopped
- The insured suffered no physical losses of product, but could not make deliveries or obtain new inventory for new sales
- The insured submitted a claim for loss of market and business interruption under their marine cargo transit policy
- Generally, cargo policies cover physical loss and damage only unless specifically endorsed

Case Example Three
Ambiguous Valuation Term

- The insured is a pharmaceutical manufacturer with a worldwide customer base
- The policy valuation for finished goods called for “Selling Price”
- Many of the insured’s shipments are sold inter-company and to major distributors as evidenced by commercial invoices
- One inter-company shipment was trucked domestically and a commercial invoice with the internal transfer price was listed to reflect that internal cost transfer. The truck, trailer and contents were stolen from a rest stop when both team drivers went inside for over an hour to shower and eat. On their return they discovered the rig missing which was later found nearby with the contents missing.
- The insured claimed for *retail* selling price – the price consumers would pay at the retail store, rather than the selling price evidenced by the inter-company invoice price applicable to that shipment
- Given the values involved litigation ensued, but better communication between the broker and underwriter regarding the meaning of “Selling Price "could have prevented the dispute

Case Example Four
Fraudulent Sale

- The insured received a sales order for goods from a new customer which called for 30-day payment terms and they supplied a ship-to address; no signature was required for delivery
- The order was picked and shipped by a parcel service and arrived at the specified residential address, and left at the front door
- When payment was not received within the required period the insured attempted to contact the buyer and learned that they did not exist and the transaction had been fraudulent
- The insured filed a claim under their transit policy which was denied as the loss did not occur during transit – the shipment was delivered exactly as specified to the address specified as contemplated by the waybill
- This type of loss occurs before transit takes place and is better covered by a crime or business policy

Case Example Five
Improper Packaging

- There is an implied warranty in every marine cargo policy that the goods must be packed sufficiently to withstand the rigors of the intended transit
- The insured was moving their office to a new location several miles away, and packed their office computers and monitors into cardboard boxes loosely, without any wrapping or dunnage around the monitor screens to keep the contents from moving within the cartons
- The cartons were sent via truck and were stacked on top of each other within the truck which did not have an air-ride suspension
- On arrival many of the monitors were cracked and the computer cases were scuffed, although they functioned
- The claim was denied due to the inadequacy of the packing which was clearly insufficient

Improper Packaging – or was it?

- Insureds should be aware that improper packaging is the most often cited reason for a claim denial by a carrier, so care should always be taken to ensure the goods are packed adequately
- Packaging of goods has to be done *reasonably well* to withstand the intended rigors of transit
- Sometimes a carrier may unfairly deny a claim, alleging that a certain packaging could have been constructed better
- In one claim denial by a parcel carrier, the electronic test equipment had been packed in a customized foam-fitted plastic Pelican case overwrapped in a cardboard carton. Following a severe mishandling and dropping of the carton by the carrier, the equipment was received with obvious carton damage and the equipment was not functioning. The claim was submitted first to the parcel carrier who denied the claim citing improper packaging, and alleging that better packaging would have prevented the loss.

In Closing

- Communicate with the Underwriter prior to binding the cargo policy to ensure that the terms and conditions match the coverage needs of the insured
- READ THE POLICY following issuance to ensure that no mistakes have been made in the submission and issuance process
- If purchasing insurance through the carrier obtain a copy of the policy if possible, or at least a summary of the terms and conditions
- Package goods to withstand the rigors of the intended transit
- AVOID SUPRISES!!!

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