

Module 3

Handling Coverage Issues

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Module 3 Chapter 3

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Learning Objectives

- ☐ Obj I – Avoiding Mistakes in Coverage Decisions
- ☐ Obj II – Avoiding Waiver and Estoppel
- ☐ Obj III – Coverage Denials
- ☐ Obj IV – Declaratory Judgment Actions

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Avoiding Mistakes in Coverage Decisions

Objective I

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Avoiding Mistakes

- ❑ Mistakes in coverage decisions can lead to:
 - ❑ Bad-faith awards.
 - ❑ Litigation.
 - ❑ Loss of customer satisfaction.
 - ❑ Increased loss ratios.
- ❑ Learning the best ways to review an insurance policy and investigate a claim helps avoid mistakes.

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Type of Mistakes

- ❑ Common mistakes that should be avoided:
 - ❑ Failing to understand policy provisions.
 - ❑ Not considering jurisdictional differences.
 - ❑ Making a decision without all the facts.
 - ❑ Assuming the policy is worded clearly.
 - ❑ Letting emotions affect decisions.
 - ❑ Improperly explaining coverage.
 - ❑ Overcommitting to a coverage decision.

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Failure to Understand Policy

- ❑ Policies often contain complex provisions.
- ❑ Claims representatives may overlook certain specific provisions.
 - ❑ May apply coverage based on how they believe the policy reads.
 - ❑ Can lead to wrongful claims denials.
- ❑ Claims representatives are not expected to memorize every word of the policy.
 - ❑ They should, however, review policy wording before making a decision.

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Jurisdictional Differences

- ❑ Different states or jurisdictions can interpret the same policy differently.
 - ❑ Claims representatives who handle claims in multiple states should consider these differences.
- ❑ The jurisdiction overseeing a coverage determination is usually the one where the policy was issued.

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Not Having All Facts

- ❑ If a claims representative fails to gather all the facts, they may make a poor decision.
 - ❑ Should always obtain a detailed account of all relevant facts.
- ❑ If insured initially provides insufficient details, may need to reserve the right to apply coverage defenses.

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Assuming Policy Wording is Clear

- ❑ A claims representative may assume claimant interprets policy the same way they do.
 - ❑ Claims representative's perspective may differ from policyholder.
- ❑ Differences can sometime be overcome if claims representative thoroughly explains provisions to policyholder.

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Emotions Affecting Decisions

- ❑ Claims representatives must separate personal feelings from their coverage decisions.
 - ❑ Insureds are sometimes unpleasant or make unusual claims.
- ❑ Coverage decisions should be based on the application of facts to policy wording.

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Improperly Explaining Coverage

- ❑ Several factors can contribute to poor explanation of coverage.
 - ❑ Claim representative may be busy.
 - ❑ Policyholder may be difficult to reach.
- ❑ Voicemails may be insufficient to explain policy provisions.
- ❑ Inadequate explanations can lead to complaints and dissatisfied customers.

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Overcommitting

- ❑ Claims representatives may overcommit to their initial coverage position.
 - ❑ May be difficult to change position later.
- ❑ Coverage investigations don't always provide for what claims representatives suspect.
 - ❑ The cost of the investigation should not influence a coverage decision.

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Practice

- ❑ When making decisions about coverage for a claim, the claims representative needs to do all of the following, EXCEPT:
 - ❑ A. Keep an open mind about different interpretations of the policy.
 - ❑ B. Memorize policy language.
 - ❑ C. Avoid letting emotions and preconceived notions get in the way.
 - ❑ D. Gather all the relevant facts.

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Avoiding Waiver and Estoppel

Objective II

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Waiver

- ❑ Coverage issues must be resolved quickly.
 - ❑ Avoids waiver, estoppel, and bad faith.
 - ❑ Many situations that present coverage questions require further investigation.
- ❑ A waiver is the voluntary and intentional relinquishment of a right.
 - ❑ Can be made expressly or by implication.
 - ❑ Can be oral, written, or inferred by conduct.

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Waiver

- Possible waiver situations:
 - If an insurer offers to make a settlement, insurer waives a fraud/concealment defense.
 - Insured might allege insurer breached its obligations, thereby waiving continued application of policy conditions.
 - Insurer can waive the insured's compliance by offering to pay the loss before compliance.
 - A waiver of the insurer's option to repair or replace the property can occur when the insurer elects to pay the claim in money.

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Estoppel

- An insurer's conduct might result in estoppel.
 - Insured must rely on insurer's conduct.
- Detrimental reliance occurs when an insured relies on the actions of an insurer.
 - This reliance harms the insured's financial position.
- Property insurance policies contain provisions against a waiver or change of policy provision.
 - Unless insurer consents to waive or change a provision in writing.

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Avoiding Waiver and Estoppel

- Nonwaiver agreements and reservation of rights letters can help avoid waiver and estoppel.
 - Should be followed by prompt investigation.
 - Laws differ by jurisdiction.
- If an advance payment is made, nonwaiver language should be included in advance payment receipt.

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Nonwaiver Agreement

- Purposes of nonwaiver agreements:
 - Advise the insured that any action taken by the insurer in investigating the loss is not intended to waive any policy conditions.
 - Clarify the intent is to permit an investigation of the claim without waving rights.
- Nonwaiver agreement is signed by the insured.
 - Can be general or specific.

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Reservation of Rights Letter

- Reservation of rights letters serve the same purposes as nonwaiver agreements.
 - Usually sent to named insureds by certified mail and are return receipt requested.
- Typically used when face-to-face contact cannot be made to obtain a nonwaiver agreement.
 - Could be used when insured refuses to sign a nonwaiver agreement.

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Advanced Payment Receipts

- Partial payments of claims are sometimes advanced to insureds.
 - Insureds may need a payment for emergency reasons.
- Advance payments are usually made:
 - During the first few days after a loss.
 - Before the insured has fully complied with policy conditions.
- Advance payment receipt is essentially a nonwaiver agreement.

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Advanced Payment Receipts

- Serves to advise the insured that:
 - Insurer has not accepted nor denied claim.
 - Payment is not an admission of liability.
 - Payment is made in response to the insured's good-faith representation regarding the loss.
 - Insurer does not waive any conditions and expects full compliance under the policy.
 - If claim is not covered, insured agrees to repay the insurer the amount advanced.

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Practice

- Which one of the following represents a difference between a nonwaiver agreement and a reservation of rights letter?
 - A. A nonwaiver agreement is signed by the insured, while the reservation of rights letter is not.
 - B. A nonwaiver agreement is drafted by the insurer, while a reservation of rights letter is drafted by the insured.
 - C. A nonwaiver agreement is delivered to the insured by certified mail, while a reservation of rights letter is only kept in the insurer's file and is not sent to the insured.
 - D. A nonwaiver agreement is only effective in avoiding waiver, while a reservation of rights letter is only effective in avoiding estoppel.

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Coverage Denials

Objective III

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Claim Denial

- ❑ A claim may be denied due to lack of coverage or failure of insured to meet a condition.
 - ❑ Denial must usually be approved by an underwriter and a claims manager.
- ❑ The insured is typically given the benefit of the doubt with respect to any ambiguity relating to coverage.

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Denial Letter

- ❑ Upon receiving the authority to deny a claim, the adjuster must prepare a denial letter on a timely basis.
 - ❑ Often drafted by attorneys.
- ❑ The denial letter should always be signed by the adjuster, even if an attorney drafts it.
 - ❑ Adjuster who signs the letter is likely to be called as a witness in the event of a lawsuit.

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Denial Letter

- ❑ Two types of denial letters:
 - ❑ General denial – reserves an insurer’s right to all possible policy defenses.
 - ❑ Invite litigation because they don’t explain why coverage is being denied.
 - ❑ Denial based on specific coverage defenses – details why the insurer is denying coverage.
 - ❑ Preferred denial letter for insureds.
- ❑ Some courts require insurers to list the reasons for denying coverage in the letter.

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Claim Denial

- ❑ Denial letters should be:
 - ❑ Sent by certified mail, return receipt requested, with a backup copy sent by regular mail.
 - ❑ Restricted to the addressee only.
 - ❑ Marked “personal and confidential” for claims denied on the basis of arson or fraud.

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Unfair Claims Practices Acts

- ❑ All states require that denials be prompt, timely, and fair.
 - ❑ Some states unfair claims practices laws outline how denials should be made.
- ❑ Some states require denials to:
 - ❑ Provide detailed explanation of all denials.
 - ❑ Provide an explanation of the facts that formed the basis of the denial.
 - ❑ Clearly inform claimants of insurer’s position on any disputed matter.

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Policy Violations

- ❑ Claims that are ordinarily covered may be denied if insured violated policy conditions.
- ❑ Most common violations leading to disputes:
 - ❑ Fraud.
 - ❑ Late reporting of losses by insured.
 - ❑ Failure to cooperate with insurer.
- ❑ Courts examine if insurer was prejudiced.
 - ❑ Ability to investigate or defend claim is adversely affected by insured’s late notice.

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Practice

- Upon receiving authority to deny a claim on the grounds of fraud, the property loss adjuster prepares a denial letter. All of the following statements are correct regarding the denial letter, EXCEPT:
 - A. The letter should be marked “personal and confidential.”
 - B. The letter should be prepared by the adjuster and signed by an attorney.
 - C. The letter should be sent by certified mail, return receipt requested.
 - D. The letter should specifically describe why the claim was denied.

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Declaratory Judgment Actions

Objective IV

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Declaratory Judgment Actions

- A declaratory judgment action is a lawsuit seeking a determination of whether policy coverage applies to a claim.
 - Does not address the issues of fault or monetary damages.
- Insurers normally file declaratory judgment actions to determine whether a claim:
 - Falls within the insuring agreement.
 - Meets the definition of a policy term.
 - Falls within a policy exclusion.

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Declaratory Judgment Actions

- DJA can resolve coverage issues such as:
 - If an exclusion applies.
 - If damages are “bodily injury” or “property damage.”
 - If other insurance policies apply.
 - When the event occurred.
 - What are the limits of liability.
 - If a policy violation precludes coverage.

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Declaratory Judgment Actions

- DJA can resolve rights/duties issues such as:
 - If insured has violated policy conditions.
 - If the insured must provide additional information.
 - If the insured is required to submit to more than one examination under oath.
 - If the insured is required to permit the insurer to conduct another investigation.

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Practice

- As used in most insurance coverage claims, a declaratory judgment action is a lawsuit seeking a judicial determination of:
 - A. Whether an insured intentionally caused the loss.
 - B. Who is at fault for the loss.
 - C. The amount the insurer needs to pay to settle a claim.
 - D. Whether policy coverage applies to a claim.

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