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DailyBusinessReview.com
An ALM Publication
DAILY BUSINESS REVIEW

May 29, 2018

PRACTICE FOCUS / INSURANCE

Fla.'s Insurance Industry and the Use of Managed Repair Contractors

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Once again, Florida's insurance industry is using managed repair as both a sword and a shield. As usual, and for good reasons, insurance companies insist on using their managed repair contractors, because it prevents runaway costs. At the same time, the so-called policyholder community insists that cost control equals shoddy work.

What never seems to change is that all Floridians—individuals and the business community—end up as net losers in these types of battles. Premiums creep higher, public adjusters and plaintiff lawyers find creative ways around the restrictions, lawsuits ensue and everyone suffers.

Insurance companies have a fiduciary duty to protect the best interests of their policyholders. General contractors also have an obligation to do their best work for their customers. Insurance companies and contractors are also for-profit businesses, which is where the bugaboo of managed repair gets bogged down.

The managed repair concept is simple. Many insurance companies in Florida either have their own in-house contractors, or enter into an arrangement with contractors to steer assignments their way. The reason everyone should, in theory, be happy, is that a damaged property gets fixed with minimum back-and-forth about how much it should cost. It sounds like a perfect solution to a legitimate problem—lawsuits which ensue almost as a matter of routine in some Florida counties where property owners are convinced by public adjusters that their insurance company low-balled them—but the reality was fraught with problems. In fact, managed repair has fostered an entirely new branch of litigation, as lawyers argue issues which were not part of litigation in the past, such as whether a new contract—in addition to the policy—was formed when the parties agreed to use managed repair.

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One insurance company voted to limit coverage for customers who declined to use the insurer's managed repair program to $10,000 per claim. Another carrier, according to data compiled by regulators, periodically sues its customers who do not properly utilize the managed repair program. This led to the inevitable complaining among people I talk to every day in the insurance industry. On one side, those advocating for property owners—public adjusters, contractors, subcontractors, roofers and plaintiff attorneys—argue that the industry is bullying customers into using contractors who have an inherent conflict of interest because of the incentive to keep their primary revenue stream (the insurer) happy. On the other side, the insurance industry sits back and watches incoming lawsuits skyrocket while being unable to do anything about it.

It's time for the insurance industry to stop slinging arrows from one side to another and come up with a viable solution.

Surprisingly, we can find a basic paradigm for this solution in professional sports. In the National Football League, after years of arguing among the league and players, independent trainers and consultants are required to assess injured players before they return to the field. While the NFL concussion protocol is a work in progress, the underlying rationale makes sense, because doctors employed by teams may not have players' best interests in mind and could be more likely to send injured players back into harms' way.

Insurance companies and those who work on behalf of policyholders should consider establishing a voluntary pool of contractors who neither answer to the insurers nor have incentive to submit excessive estimates. It would be easy to create a general list of criteria for these contractors to adhere to, while being transparent. These criteria could be as simple as verifying licensing and insurance information (worker's compensation insurance, liability insurance, etc.), and requiring the contractor to adhere to a pledge that they will not favor either the customer or the insurance company. The most important part of the program would be assignment by random rotation, so that a plaintiff's attorney couldn't nix the use of a certain contractor as one who favors insurance companies and neither could the insurance company decide that a contractor too often favored the homeowner. Most of the requirements relating to general contractors are already regulated by Florida's Construction Industry Licensing Board, which means that minimal work would be necessary to vet which contractors are qualified to join this group.

Everyone who works in the insurance industry—whether a claims adjuster at an insurer or a public adjuster, not to mention attorneys on both sides of the issue—serves the interests of Florida's property owners. It would be a shame to let such an opportunity slip by.

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