

Column

Procedural fairness – the wasted potential in claims negotiations

The commercial insurance business is characterized by negotiations, starting with contract and premium negotiation up to the claims settlement. Such negotiation situations often resemble an oriental bazaar. No wonder that discontent about the results prevails, for example about the coverage payments after a loss. The time has come to change the way negotiations are conducted.

Executives on the policy holder's side, insurers and brokers are regularly confronted with difficult negotiation situations. In view of the fact that negotiations take place every day and have an outstanding economic significance, they are conducted astonishingly intuitive and irrational. Asking a negotiator for an explanation of his methodology, the explanation always sounds like "I have always done it like this."

Basic principle in most negotiation situations is the firm belief of the participating parties that their own profit necessarily implies a loss for the counterpart. Negotiations are considered a zero-sum game and conducted as such. The parties argumentatively dance around two claims and eventually come to an agreement. Such bazaar negotiations are often characterized by unfair tactics and patterns of behavior. The parties will then regularly perceive a compromise as a defeat. In order to change this, negotiations would have to be modernized and professionalized.

A major reason for unsatisfying results is the fact that the parties wrongly equate negotiation positions and the underlying interests. Opposite to the stubbornly defended position, the actual interests of the counterpart can be diverse. Maybe the policy holder's main intention in the insured event is to make sure that the business relationship to the damaged party is not burdened. Such interests, which are often beyond the discussed

scope of negotiation, have to be detected, considered and respected. The key to this is procedural fairness.

Simple social psychological experiments show that the average negotiation result will be significantly better for all parties if the parties involved do not only understand their own interests but also those of the counterpart and include it into the negotiation.

An interest-oriented approach requires a structured procedure to be agreed upon by the parties at the beginning and which will impede manipulative behavior. Those who recognize that their interests are taken into account in a transparent procedure will also consider the result of the procedure as fair. The negotiation becomes a win-win-situation.

Such professionalization of the negotiation culture, away from the intuitively driven bazaar towards procedural fairness would serve all parties involved. Policy holders would perceive results of out-of-court claims settlement are more comprehensible and appropriate. The image of insurers would profit. Both parties could avoid time-consuming and cost-intensive court proceedings. This may not be in the interest of all lawyers but it would always be in the interest of the insured industry and their insurers.

Dr. Mark Wilhelm, LL.M.

Lawyer

Master of Insurance Law

Specialist solicitor for insurance law

Wilhelm Rechtsanwälte

Partnerschaft von Rechtsanwälten mbB

Reichsstraße 43

40217 Düsseldorf

Telephone: + 49 (0)211 687746 - 12

Telefax: + 49 (0)211 687746 - 20

www.wilhelm-rae.de

mark.wilhelm@wilhelm-rae.de