

Kolumne

Claim settlement: are experts always neutral?

After the occurrence of an insured event – particularly in property insurances or business interruption insurances – discussions often arise regarding the cause and the scope of loss. In such case, insurers and policy holders often agree to instruct an expert. The proposal to involve an expert is often made by the insurer. Policy holders then expect the expert to examine the facts quickly, efficiently and unbiased – and are often disappointed in the end.

For many experts the income of their activity as an expert is their only or main revenue source. The idea that these experts are not aware of the expectations of their potential clients from the start is often unrealistic. After having received the expert's opinion, policy holders are often disappointed, not only about the content of the opinion but also about how it was prepared.

According to our view, policy holders should not agree too rashly with the insurer on the commissioning of an expert with the insurer. Besides qualification, the expert's neutrality must be ensured prior to the commissioning. Several questions arise: Who proposes the expert and who has to agree to a proposal? Who instructs and pays for the expert? What is the role of insurers and policy holders when they accompany the expert to on-site inspections? Are the parties allowed to provide the expert with information and to ask him questions? Who defines the questions to be examined and to be answered by the expert?

We would like to illustrate this problem by using the following case: A fuse burns, resulting in cable fire. Consequently a major part of a hall burns down.

After notification of the claim, discussions concerning the scope of loss arise between the insurer and its policy holder. In order to end these discussions mutually and cost-efficiently, the insurer proposes to instruct an expert for whom he is willing to pay for. The policy holder agrees on the expert proposed. Later the expert determines the scope of loss. In his report, he also makes remarks about what might have caused the cable fire. He notes that the fuses installed by the policy holder were insufficiently dimensioned. According to the expert, the policy holder profoundly violated the official minimum standards (DIN etc.).

After receiving the opinion, the insurer states that the policy holder recklessly caused the insured event and breached an obligation. The insurer offers the policy holder to pay, at best, 50 percent of the determined amount of loss.

The policy holder is upset. He did not expect that the expert also examines a possible breach of obligations or an alleged gross negligence. Also, the expert had never consulted the policy holder regarding these questions before drafting his report.

Many experts admittedly do their jobs unbiasedly and proficiently. However, policy holders are often disappointed with the results of expert opinions. The above mentioned questions should therefore be clarified between the insurer and the policy holder before selecting and commissioning an expert.

A part of the above-mentioned problem results from wrong expectations of many policy holders: they expect the expert report to be just a pre-stage of the insurer's payment. But an expert opinion can contain information which indicates that the loss is not insured or not (fully) covered. Thus, involving an expert in claim settlement bears not only chances but also risks for the policy holder.

Lars Winkler

Wilhelm Rechtsanwälte
Partnerschaft von Rechtsanwälten
Reichsstraße 43
40217 Düsseldorf

Tel: + 49 (0)211 687746 - 0

WILHELM

RECHTSANWÄLTE

- 3 -

Fax: + 49 (0)211 687746 - 20

www.wilhelm-rae.de

lars.winkler@wilhelm-rae.de

Seat: Düsseldorf - AG Essen: PR 1597