

Scoping Loss - A Lost Art?

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A first-party property adjuster's job involves verifying coverage, determining the scope of the loss, calculating the cost of repairing the covered damage(s), and paying the policyholder. That's the idea anyway; however, a look at experience, current litigation, and select claims-handling procedures indicates otherwise. In fact, it can lead one to believe that the process and necessity of accurately determining the full scope of loss is a lost art, or at least an overlooked one.

The claims adjuster owes a duty to the insured to give at least as much consideration to the interests of the insured as to those of the insurance carrier. The adjuster is the expert, or at least has experience in handling hundreds more claims than the average insured. This claims professional either is or *should* be much more conversant with the nature, type and location of damages often associated with a particular cause of loss. To accurately calculate the benefits owed, the insurer must properly and fully investigate the nature and extent of the damage(s) to establish a full scope of loss. The full scope of loss would include a determination of all damage resulting from the covered cause of loss, as noted below.

*A **scope** or scope sheet is a list of the areas damaged, which includes the type of damage, a description of the proposed type of repairs, and a measurement of those areas.*¹

The adjuster has a duty to advise the first-party insured of the benefits available under the policy. The insurance company is operating from a position of superior knowledge and deals with claims and policy provisions on a daily basis. The insurance company wrote the policy, and the policyholder generally has no ability to negotiate the policy provisions. Thus, the individual policyholder must take the policy as is or not at all.

The primary duty of the claim representative is to deliver the promise to pay. Therefore, the claim representative's chief task is to seek and find coverage, not to seek and find coverage controversies or to deny or dispute claims.²

The adjuster's inspection of the damages for most claims generally can and should be done with the insured. The adjuster should know what type of damages to expect and where to look for the damages or when to note open items or areas for more invasive examination or testing by an expert or contractor. For a relatively straightforward claim, the adjuster can decide on the spot what damages are covered and what, if any, damages are not covered.

The adjuster should try to obtain an agreement with the insured on the scope of loss and damages before proceeding with pricing out the work or repairs in an estimate. If the adjuster and the insured can agree on the nature and extent of the damage and what is covered and not covered the adjuster can proceed with the next steps in adjusting the claim.

Insurance industry standards require that an adjuster be experienced or otherwise able to handle the claims assigned to him or her. The adjuster should be properly trained and knowledgeable. Depending upon his or her level of expertise, the adjuster may be operating under the supervision of someone who is more experienced. The insurer also has a duty to make sure that the adjuster is aware of—and following the rules set forth by—the *Unfair Claims Settlement Practices Act* and/or procedures of the state, along with industry best practices. As Barry Zalma advises:

There is no excuse, regardless of the size of the loss, for failing to complete a thorough investigation. Such a failure can be construed as a breach of the Model Fair Claims Practices Act.³

Some losses are simply too large or too complicated to be scoped on a simple walk-through and discussion. On larger or more complicated claims, the adjuster (or the adjuster's expert or contractor) should still inspect the loss with the insured (or the insured's expert, contractor, or public adjuster). Regardless of the size of the loss, it is necessary for the claims adjuster and the insured to come to an agreement, at an early stage preferably, on the scope of the loss.

The adjuster and the insured must work together to arrive at a proper scope of loss. The adjuster has the experience and knows the coverage; the insured knows the property. Zalma also advises:

To aid the insured in his obligation to prove his loss, the insurance claims professional must, on the first visit, establish with the insured the exact Scope of Loss. This means that the insurance claims professional and the insured [or his public adjuster] must walk through his house or business and agree to exactly what was damaged and destroyed as a result of the peril insured against.⁴

Until the adjuster and the insured have agreed on the scope of loss, to include all reasonably known damages and both sides have agreed on whether the damaged items can be repaired or will need to be replaced, any estimates with pricing may be premature.

As Zalma points out, "once the insurance claims professional and the Insured have agreed to the Scope of Loss, the insurance claims professional should have the insured sign the form agreeing to the scope."⁵

If either side or both sides proceed without an agreed on scope of loss and move on to the stage of preparing estimates on differing scopes of loss the claim becomes much more difficult to adjust. When dealing with estimates based on differing scopes of loss the adjuster has lost sight of one of the basic premises of property insurance—indemnification for the loss itself. If there is no agreement on the scope of loss, then the adjuster may not actually know what the loss really is. The claims process may devolve from a discussion of the actual loss to an argument over dollars with the insurance company focusing on low value estimates and the insured focusing on high value estimates, with both sides claiming to be right, all without regard to what the loss actually is.

Only after agreement has been reached on the scope of loss should the adjuster proceed with determining the actual dollar cost of the repairs:

*A preliminary scope is normally provided to the insurer with initial reports, but it is also commonly provided to contractors who have been asked to submit repair or reconstruction bids. The preliminary scope allows the contractor to prepare a bid that covers the same items as the adjuster's scope.*⁶

If the adjuster has a proper and complete scope of loss, agreed on with the insured, it becomes a fairly simple matter to provide a copy of the scope to the adjuster's contractors and the insured's contractors, if any, to be priced out. Now, if the contractors agree on the scope and price out the same scope, the matter will normally be just a matter of the insured choosing which contractor to use. When the difference is just pricing, the policy allows for arbitration.

While the insurance policy generally provides for arbitration, it must be remembered that Arbitration presumes there is an agreement on the scope of loss and the focus is on determining the right price for an agreed on damage—for example, replace the entire roof versus a few shingles. The arbitration process is not designed for—and generally cannot resolve issues about—the scope of loss.

If the adjuster is unable to prepare a proper scope of loss, then it is recommended that a competent expert or consultant be brought in to assist the adjuster. Insurance industry standards require the adjuster/company to call in appropriate experts or vendors as needed to assist the adjuster in determining the cause of the loss and/or the scope of loss.

*Experts are commonly used to determine facts, to verify the extent of loss or damage, and to estimate the value of loss to real and personal property.*⁷

All too often property claims without an agreed on scope of loss will wind up in litigation. Most attorneys quickly, or eventually, realize that to litigate the matter properly they have to hire expensive experts or contractors to sit down with each other and work out what the actual damages are before anyone can move on to talking dollars for settlement.

If the insurance claims professional does not have an agreed on scope of loss at the beginning of the adjustment, the loss will, invariably, be larger when it is finally put together by the insured or his public adjuster.⁸

Unfortunately, it is not just the large complicated claims that have problems with obtaining an agreed on scope of loss. It is understandable that both sides will need experts and contractors for a power plant explosion with more than \$200 million in damages or for a large hotel that has incurred \$50 million in damages from a major hurricane. However, when an adjuster just walks through a house with covered water damage and fails to carefully look for and find all reasonably expected damages and fails to discuss and agree on the damages with the homeowner one has to question whether the insurance company is properly training the adjuster.

Determination of the proper scope of loss is a vital part of a first-party property loss but is often overlooked with the company's push to close claims quickly or with the overworked adjuster doing a quick and cursory look at visible damage and forgetting to look for the not-so-visible damage. Slow down a little bit, do a better inspection, communicate with and explain matters to the insured and more claims will settle faster and without expensive litigation.

Let's bring back the art of obtaining a mutually agreed-upon scope of loss!

Footnotes

¹ *Property Loss Adjusting*, 3rd Edition, Donna J. Popow, American Institute for Chartered Property Casualty, 2009, page 5.14

² *The Claims Environment*, 1st edition, James Markham, 1993, Insurance Institute of America, pg. 13

³ *Property Claims*, 2nd edition, Barry Zalma, Claim School, Inc., ISBN: 1884770-19-3, 1998, page 89

⁴ *Property Claims*, page 12

⁵ *Property Claims*, pages 12, 13

⁶ *Property Loss Adjusting*, page 5.14

⁷ *Property Loss Adjusting*, page 5.14

⁸ *Property Claims*, page 13

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