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Communication is key – so why are we so bad at it?

I. Why is Communication So Important in the Claims Process?

The common theme found in the list of claims gone bad typically starts and ends with poor communication and this communication starts with the claims team. Understanding some of the subtle and not-so subtle nuances to establish effective communication between and across a claims team is invaluable for all industry professionals. Teams that can be dubbed highly effective and communicative are less likely to have allegations of bad faith or negligence in handling or any other negative connotation. And by extension, clear and accurate communication within the claims team leads to clearer and more accurate communication with parties outside the claims team including with the insured, the claimant, and/or the trier of fact. Good and accurate communication, both within the claims team and with parties outside the claim team, is the first line of defense against rogue claims.

However, communication is about more than just exchanging information...and therein lies the biggest problem. Work, family, friends, politics, friends, (the list goes on and on) all eat up portions of our time. For some of these, the time taken up in our day is a pleasure while in others, it's a chore. A natural consequence of this is that we all try to minimize the time spent with the "chores" and maximize the time with the "pleasures". To any sane person, listening to someone else's problems falls squarely in the "chore" category so the natural inclination is to get this done as quickly as possible. However, speedy communication is typically antithetical to effective communication. Effective communication requires that information be shared with discretion, with empathy, and with clear intentions to avoid misleading messages and improper inference. This is typically where communication problems first rear their ugly heads. Communication requires strong listening skills in a way that gains the full meaning of what's being alleged within a claim, while making ancillary parties (such as the insured or claimant) feel heard and understood. This typically requires us to take our time in our communications to make sure the communication is effective. When we "hear what we want to hear" or when "what we hear is not what was said", this leads to misunderstandings in claims, contention between the insured and adjuster, hurt feelings and anger, and often to litigation. No matter who the communication is between, developing trust and respect fosters improved communication, teamwork, problem solving, and a reduction in contentious situations.

II. Establishing Good Communication in the Claims Team

Interweaving the claims team is an important first step in establishing good communication – as there are many varying ethical implications that each party has that must combine into a cohesive team. For starters, each claims team member has their own ethical considerations, which colors and shades what, how, and with whom they communicate information. This includes, but is not limited to underwriters, claims examiners and handlers, independent adjusters (IA), third party administrators (TPA), attorneys (inside, outside, defense, plaintiff), and expert consultants. From one party to another, it's a true mine field of ethics when the requirements for good communication are considered.

Ethical implications include preconceived notions or biases that are inherently part of human behavior, and thus by extension applied in our decision-making in the workplace. Separating these contentious and litigious talking points is a necessity across the claims team; the discovery (or mere suggestion) of ethical mishandlings, underlying biases, and what each party should (and should not) communicate within the team can change the direction of any claim or legal matter, whether an allegation of bad faith or claim that a party has engaged in unethical practices. Ethical obligations across a claims team varies significantly as do the varying vulnerabilities for claims professionals, attorneys, and experts. There is an interplay and nuance with the ethics from each, and each member of the claims team needs to remember and be respectful of the ethical considerations and limitations that the other professionals have with respect to the how, when, where, why, and what each of these parties communicates. Keeping that in mind and approaching each other with respect and understanding is key to successful communication within the claims team.

II. Qualities a Claims Team with Good Communication Habits Will Embody

Seven Qualities to Consider

There are multiple communication habits that each member of the claims team must practice to avoid the pitfalls which result in claims going rogue. These habits include: 1) be communicative, 2) be diligent, 3) remain unbiased, 4) be transparent, 5) use discretion, 6) be collaborative and a team player, and 7) commit yourself to excellence.

Be communicative

A survey conducted by the Economist Intelligence Unit surveyed over 400 people of varying business responsibilities and found that approximately 44 percent of respondents indicated that poor communication led to “project delays, failures, and cancellation.” Additionally, approximately 31 percent of respondents reported low morale due to such communication pitfalls. From the expert (forensic) perspective, regular shortcomings in client surveys from claims and legal professionals, communication failures lead the negative column. This clearly demonstrates the need to be communicative in all environments, including the claims team.

As noted previously, to be more communicative, the conversation has to be about more than just how information is exchanged. The information must be shared with discretion, with empathy, and with clear intentions (i.e. avoidance of misleading messages). Communication requires strong listening skills in a way that gains the full meaning of what's being alleged, while making the other person (i.e. insured) feel heard and understood. The key to making someone feel heard and understood is to make sure you understand what you're being told in as deep and clear a manner as the person communicating. This requires not just taking in and intellectually processing facts, but also in understanding the goals, needs, and desires of the communicating party to the same level and depth that they do. Only when the communicating party's goals,

needs, desires, and all of the facts are understood should one move on to the stage of evaluating the information. Claims professionals that work in such a manner will establish that they have heard, understood, and empathize with what the other party needs, whether they be a colleague on the claims team or an outside party. The key is to listen and understand before evaluating or moving on to the decision-making process. This is the first step in a successful claims process and the key step in keeping a claim from going bad, which often results in the dreaded “bad faith” claim.

To prove bad faith, the word “timely” shows up often. Common denominators with bad faith and negligence cases reveal that one person says something, the other person hears something else. This leads to misunderstandings, frustration, and undoubtedly – litigation. No matter who the communication is between, developing trust and respect will foster improved teamwork, problem solving, and a reduction in contentious situations.

Be diligent

“Diligent” is defined as having or showing care and conscientiousness in one’s work. When communication is improved, specifically listening to what the person on the other end of the conversation is saying, the full message can be understood and the members of the claims team can diligently work to evaluate and resolve a claim. For the claims team, that starts with understanding the allegation itself. When understood clearly, diligence can be followed. This concept can translate for claims professionals to know when it’s time to retain counsel or retain an expert. Again, “timely” understanding of these concepts can mitigate the contentiousness of bad faith and negligence.

Using the retention of an attorney or expert is a good example. Attorneys can see the blind spot, per se, that a claims professional may overlook; most importantly, with regards to legal concerns. Separately, when an expert is retained early, they can assist the claims professionals and legal counsel in document requests, providing questions for the plaintiff (or opposing expert), or more importantly, helping identify “the good, the bad, and the ugly” of an allegation to put the claims professionals and legal counsel on a better footing with respect to the validity of a claim. No matter what each of those mean, having a clear picture of the case displays diligence in providing coverage decisions, engaging in settlement discussions, and/or proceeding to litigation.

Remain unbiased

Biases exist, whether they are accepted or discarded. Bias is defined as a preference or an inclination, especially one that inhibits impartial judgment; furthermore, an unfair act or policy stemming from prejudice. This subject could expand the seven habits explored here and create seven more sub-habits, especially when considering the discussion of “unconscious bias.”

Vanderbilt University tackles the unconscious bias head on, and rather than reinventing the wheel, their discussion is presented in the following: *“Unconscious bias (or implicit bias) is often defined as prejudice or unsupported judgments in favor of or against one thing, person, or group as compared to another, in a way that is usually considered unfair. Many researchers suggest that unconscious bias occurs automatically as the brain makes quick judgments based on past experiences and background. As a result of unconscious biases, certain people benefit and other people are penalized. In contrast, deliberate prejudices are defined as conscious bias (or explicit bias). Although we all have biases, many unconscious biases tend to be exhibited toward minority groups based on factors such as class, gender, sexual orientation, race, ethnicity, nationality, religious beliefs, age, disability and more.”* Although bias can rarely (if ever) be completely

eliminated, by communicating effectively (starting with listening with empathy and a desire to understand), the impacts of biases can be reduced. This leads to other ancillary benefits that include “*increased group innovations, productivity, and creativity; enhanced relationship- and community-building; and, greater inclusion, equity and appreciation for diversity.*”

The following are a number of strategies identified in the Vanderbilt University study to reduce bias:

- *Learn as Much as Possible About Unconscious Bias...and Ways to Combat It*
- *Tell Your Story...and Listening to the Stories of Others*
- *Avoid Stereotypes and Over-Generalizations*
- *Separate Feelings from Facts*
- *Have a Diverse Group of People around the Decision-Making Table*
- *Engage in Self- Reflection to Uncover Personal Biases*
- *Develop Safe and Brave Spaces to Discuss Unconscious Bias*
- *Be an Active Ally*
- *Don't Expect a Quick Fix*
- *Practice Empathy*

As indicated by this list, effective communication is a key component of reducing biases.

Be transparent

For a claims team to work seamless, and effectively together, open and transparent communication is required. Information should be shared between everyone on the “same team.” Granted, discretion is necessary (additional discussion to follow), but when information is shared upward, downward, and laterally (as many have described), everyone can be on the same page. However, this does not always occur – and in some cases – should not occur.

The purpose of transparency between the claims team and the insured, claimant, or opposing party is to make sure information is clearly understood. Rather than concealing bad news, it gives the impacted party/group the chance to “get in front of it.” Hiding something or concealing it opens up the exposure of “timely” claims decisions that create contention and likely resulting litigation. When this happens, communication breakdowns in the team tend toward cover-ups, finger-pointing, and avoidance. When this occurs within the claims team, one member may inadvertently be blindsided; however, it must be remembered that when one falls, everyone falls. Open, transparent communication should be the foundation for a collaborative environment and a collaborative environment increases the likelihood of an agreeable resolution of a claim.

Use discretion

Discretion aligns with transparency. Having open, transparent communication within the claims team regarding the good, the bad, and the ugly should happen. However, some discussions shouldn't happen. And this is where discretion in communication becomes key. Areas where discretion in communication within the claims team should occur include:

- Attorneys advising claims adjusters to deny when coverage does exist.
- Claims adjusters reading policy language to experts to find exclusions.
- Attorneys discussing legal strategy with experts to identify exclusions based on policy language.
- Experts collaborating with claims professionals and attorneys with reports ahead of submission (i.e. draft reports).

When discretion is not exercised in situations such as those listed above, legal and ethical boundaries could be crossed.

Be collaborative and a team player

The Resources for Research Ethics Education tackles collaboration in a relevant manner for this discussion: *“The nature of collaborations is variable, but responsible collaborations are always defined by openness and early, on-going communication. Sciences is a communal enterprise; both science and society are best served by collegiality and open collaboration. There should be a mutual understanding of what is to be exchanged through the collaboration, how the research will be undertaken, and how the products of the collaboration will be shared. Collaboration is most likely to succeed if expectations are clearly communicated (and perhaps documented) before commitments are made.”*

Collaboration equates to better teamwork, better morale, and results in better decisions being made. Working together also breeds consistency – such that there are less decisions being made on the fly. The reduction in bad faith, negligence, and unethical behavior is the end game plan. However, as noted above, *“responsible collaborations are always defined by openness and early, on-going communication.”* Here again, communication that is characterized by listening to gain a full understanding of the other side’s claims with a goal of making the other person feel heard and understood is the key to effective collaboration with communication

Commit yourself to excellence

Committing to excellence in communication is a fundamental of ethical principles. It is important to remember that committing to excellence in communication is achievable – whereas committing to perfection in communication is impossible. This commitment essentially summarizes the prior six proposed habits of an effective communicator and can serve as a reminder to the claims team that working at a higher level, together, can result in a better product.

III. Turning the Theoretical into Reality

Understanding and putting into practice the above habits of effective communicators serves to establish effective communication between and across a claims team. Such skills are invaluable for all industry professionals. Teams that can be dubbed highly effective are more likely to be characterized by effective communication and are less likely to have allegations of bad faith or negligence in handling or any other negative outcome. Learning tools for being more effective communicators in the litigious insurance industry eliminates the gray areas, and further establishing black and white/good and bad/right and wrong positions in all claims situations. Adopting the above principles serves to minimize miscommunication and mitigates problems that arise between, insurers, insureds, third party risk transfer, in addition to the involvement of legal counsel and expert witnesses.