



2020 Annual Conference
March 18-20, 2020
Dallas, TX

Seven Habits that Define a Highly Effective Claims Team

I. Purpose

Course Origin

Stephen Covey's 1989 bestseller that has inspired for over 30 years; it identifies seven habits of highly effective people; the book is principle-centered, character-based, using a pseudo 'inside-out' approach to personal and interpersonal effectiveness. This is a comprehensive guide to "self" growth and advancement. His book can be used as an outline (per say) into developing principles for building highly effective claims teams. Claims teams go beyond just insurance company employees, but all the folks from policy inception to expert witness testimony, including but not limited to underwriters, claims handlers/examiners, inside/outside adjusters, third party administrators, defense counsel, and expert consultants/witnesses.

Self-improvement is a popular adage and is not a new concept. However, in the world of claims, it has been seen, and often exploited by opposing parties, that one hand doesn't talk to the other. This is where bad faith and negligence can be born. For the sake of a claims team shouldn't be a new concept, but too often one hand doesn't talk to the other. Ground zero often is communication – the heart and soul of a case that goes well or conversely goes south.

High Level Review & Background into Covey's Book

The seven habits explored in the panel are not those included within the Covey book. Covey presents the following: Be Proactive, Begin with the end in mind, Put first things first, Think win-win, Seek first to understand, then to be understood, Synergize, and Sharpen the saw.

Takeaways from the Covey Book

Early in the book, a concept of dependence, independence, and interdependence is explored. All of these habits are well developed, presented, and interpreted within the Covey book; for purposes of discussion, these habits will not be regurgitated but used as inspiration.

Establishing Who's Who in Typical Insurance Claims Team

Interweaving the claims team is an important first step – as there are many ethical implications that occur with each. For starters, each claims team member has their own ethical implications including but 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.

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 or underlying biases can change the direction of any claim or legal matter, whether an allegation of bad faith or unethical practice. 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.

II. Introduction of Qualities a Claims Team will Embody

Seven Qualities to Consider

The following ethics-based discussion is not new, not life-changing, or ground-breaking; however, professional ethics is too often completed as a “check-the-box” in continuing education. Introduction of the following qualities to improve ethical decision making in the workplace. Bad faith, negligence, or more simply, unethical behavior, can be a result. Defining and understanding these concepts (and legal origins) are necessary with proceeding to define the seven qualities:

Bad faith

Numerous states have laws defining and governing bad faith. For instance, in Colorado, insurance companies have an obligation under state law to act in “good faith.” “[T]he insurance company is not called upon to perform [the duty of good faith] until some contractual duty imposed by the insurance policy has arisen.” Refer to *Daugherty v. Allstate Ins. Co.*, 55 P.3d 224, 228 (Colo. App. 2002). When such good faith is not followed, it is described as “bad faith.” In California, refer to *Kransco v. Am. Empire Surplus Lines Ins. Co.*, 23 Cal. 4th 390, 400 (2000), as modified (July 26, 2000). Operating in good faith means insurance companies are required to do the comply with the following, as well as other items:

- Timely investigation of the claim
- Timely adjustment, determination of coverage, of the claim
- Communication regarding claim status.
- Timely payments for undisputed (agreed upon) items within the claim
- Timely communication with founded explanation for any denied claims

When insurance companies operate outside of these parameters, or fail to do one of the above, allegations of bad faith may arise. Bad faith is broached through plaintiff attorney firms that survive on exposing such issues. In Colorado, insureds may be

eligible for up to three times the amount of claim amount as well as interest on the unpaid portion, plaintiff attorney fees, legal fees, and punitive damages.

Negligence

Cornell provides a definition for negligence as follows: *“A failure to behave with the level of care that someone of ordinary prudence would have exercised under the same circumstances. The behavior usually consists of actions, but can also consist of omissions when there is some duty to act (e.g., a duty to help victims of one’s previous conduct).”* Negligence clearly ties back to bad faith – with the understanding that in order to succeed in a negligence case, the plaintiff must prove four elements to show the defendant acted negligent; duty, breach, causation, and damages.

Ethical & Unethical Behavior

Unethical behavior will look differently from each perspective given the three main groups within the claims team are managed differently; from claims to the attorneys to the [engineer/architect] experts. The Josephson Institute defines ethics as follows: *“Ethical principles are universal standards of right and wrong prescribing the kind of behavior an ethical company or person should and should not engage in. These principles provide a guide to making decisions but they also establish the criteria by which your decisions will be judged by others.”*

Claims adjusters who work for insurance companies have a perceived inherent conflict of interest when dealing with insureds, as pointed out (or alleged) by plaintiff firms. Adjusters represent their employer and are perceived to be protecting the insurance company. Are the adjuster protecting their company or looking out for the insured? The question has been raised, but is it founded?

Experts, whom are also licensed engineers or architects, have their own ethical obligations to their licenses. The National Society of Professional Engineers tackles the individual states’ requirements well with their fundamental canons: *“Engineers, in the fulfillment of their professional duties, shall: Hold paramount the safety, health, and welfare of the public; Perform services only in areas of their competence; Issue public statements only in an objective and truthful manner; Act for each employer or client as faithful agents or trustees; Avoid deceptive acts; and conduct themselves honorably, responsibly, ethically, and lawfully so as to enhance the honor, reputation, and usefulness of the profession.”*

Considering bad faith, negligence, and unethical behavior, the mine field for the claims team has been identified. As such, seven NEW habits for a claims team have been developed to combat the pitfalls of many, which 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 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.

To be more communicative, the conversation has to be about more than just exchanging information. 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. Listen and evaluate before making decisions – a big first step in avoiding bad faith.

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

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. For the claims team, that is 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 say, that a claims professional may overlook; most importantly, with regards to legal concerns. Separately, when an expert is retained early, they can assist with claims and counsel in document requests, providing questions for the plaintiff (or opposing expert), or more importantly, helping identify the good, the bad, and the ugly. 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 and create seven more sub-habits, especially when considering the discussion of the “unconscious bias.”

Vanderbilt University tackles the unconscious bias head on, and rather than reinventing the wheel, shall present their discussion 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.” Further, the discuss the 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 identified strategies identified:

- *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*

Be transparent

For a claims team to work seamless, and effectively together, open and transparent communication is required. Information should be shared between those on the “same team.” Granted, discretion is necessary (to be discussed in the following section). 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 is between the claims team and the insured, or claimant, or opposing party. Rather than concealing bad news, it’s better to get in front of it. Hiding something or concealing it opens up the exposure of “timely” claims decisions. When this happens, there is a tendency of cover-ups, finger-pointing, and avoidance – when this occurs within the claims team, one member may inadvertently be blindsided. And when one falls, everyone falls. Open, transparent communication should be the foundation for a collaborative environment.

Use discretion

Discretion aligns with transparency. Having open, transparent discussions regarding the good, the bad, and the ugly should happen. However, some discussions shouldn’t happen, such as:

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

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 morality, 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.

Commit yourself to excellence.

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

III. Bringing Everything Together

Turning Theoretical “Team Building” into Reality - Ethical Implications

Understanding some of the subtle and not-so subtle nuances in order to establish effective communication between and across a claims team is invaluable for all industry professionals. Teams that can be dubbed highly effective are less likely to have allegations of bad faith or negligence in handling or any other negative connotation. Learning tools for being more effective communicators in the litigious insurance industry eliminates the gray areas, while further establishing black and white; in other words, good vs. bad, a principle of ethics in itself. Adopting one or more of the above principles effectively mitigates problems that arise downstream between, insurers, insureds, third party risk transfer, in addition to the involvement of legal counsel and expert witnesses.