



Claims Conversation

with **Roger Howson**, Claims Dispute Resolution, TCAA President, Editor, Education Coordinator

An attorney once told me that the best advice he ever got about practicing law came on his first day of Law School.

Right at the start of his very first class of his very first day as a law student, his professor warned her students that from now on and for as long as they practice law they will be ambushed by family, friends, and acquaintances to answer legal questions. She said that as legal professionals they will be expected to have immediate answers for questions of law regarding matters of criminal, corporate, environmental, employment, tax, real estate, personal injury, probate, insurance, and every other conceivable significance.

This law professor warned them that even though they're only one day into Law School that to their family, friends, and acquaintances they now KNOW the law. She cautioned her students that even the very best criminal lawyer probably knows next to nothing about probate law, just as environmental lawyers probably know very little about employment law. She said that lawyers are all expected to be able to solve any kind of legal problem... regardless of their areas of expertise.

The law professor told them that most lawyers are proud of their profession, confident in their abilities, and inclined to help those in need. She said that this is what gets them in trouble. She told them that giving someone wrong legal advice is worse than giving them no legal advice. She said that people looking for free legal advice actually get less value than what they paid.

She told her law students that even if they tell people "I'm only in Law School, so I'm not yet qualified to answer that question," they'll be no more successful at shutting down the questioner than the lawyer who tells the indiscriminant moocher of legal services, "That's not my area of expertise."

She informed her class that there is one perfect answer to every legal question they will ever be asked. She explained that this one two-word answer

will prove their legal brilliance, and it will bring no legal harm to the person asking for their help. She said that this answer is legally correct in every circumstance regardless of the area of law, jurisdiction, adversaries, or facts of the case.

The law professor promised the class that if they remember nothing else from their study and practice of the law—these two words would enable them to provide the most accurate and useful legal advice anytime, anywhere, anyhow. She instructed her class to write down the one correct answer to every legal question they would ever be asked...

IT DEPENDS.

It depends on so many variables that no legal scholar or practicing attorney can accurately answer an ambush question. There's no way to know all of the relevant facts, relationships, history, context, nuances, assumptions, biases, and everything else that complicates a seemingly simple legal matter.

We claims professionals should consider defaulting to the same "It depends," answer whenever OUR family, friends, and acquaintances are complaining to us about their insurance claim.

I can't tell you how many times that I've been called upon to mediate, arbitrate, or appraise an insurance claim wherein the policyholder or claimant is (ineffectively) arguing their claim based on incomplete, inaccurate, inappropriate, and/or incompetent feedback they claim to have received from someone they know who is "in the business".

We can do a lot of damage to someone else's good faith claims process when we're advising others how to resolve their disputed claim without us knowing for sure the insurance policy, the cause of loss, the extent of the damage, the service providers involved, and/or the circumstances of the claim. We don't know what we don't know. Too often the situation is misrepresented (either innocently or intentionally) or our feedback is misunderstood.

I sometimes overhear people casually commenting on the claims practices of other insurance companies, insuring agreements written by other agents or brokers, coverage decisions made by other adjusters, repair protocols suggested by other engineers and/or contractors, and defense (or plaintiff) strategies practiced by other attorneys.

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Case Study

Oral Binders: What is Required to Supersede the Usual Terms of a Policy?

— by Jeffrey D. Eberhard

Claims Pointer: When damages to property are not generally covered under a standard insurance policy, an oral binder may supersede the standard policy only when the terms of the oral binder are definite, explicit and unambiguous.

After discussing the purchase of insurance coverage with an insurance agent, there may be a period of time between the date coverage begins and the date the insured receives a copy of the policy. During that time, insurance coverage is guaranteed by an oral contract, known as an oral binder. If an insured suffers a loss prior to receipt of the actual policy documents, the oral binder is sufficient to provide the coverage discussed. A recent Oregon Court of Appeals case, Stuart v. Country Mutual Insurance

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Claims Conversation... *(Continued from previous page)*

Like you, I’m occasionally asked for advice or commentary on a claims situation. I’ve learned to preface every conversation with “It depends,” because I’ve become much more aware of how much wrong information gets passed back and forth in casual conversation whenever anyone is complaining about how their insurance claim is being handled. Too many bad results come from good intentions.

It depends. ❖

Company discussed when an oral binder can supersede the terms of a written policy. Case No: CV050384, May 5, 2009.

John Stuart bought a small family farm and improvements in Yamhill County with a plan to build a new home on the property while living in the existing structure. In March 2003, Stuart met with an agent for Country Mutual to discuss insurance coverage for the property, its existing structures, and the house that Stuart was planning to build. Stuart informed the agent that he was interested in “course of construction coverage” insurance to act as a “safety net” of coverage in case something went wrong during construction. However, the insurance could not be issued because construction had not yet started. Instead, an AgriPlus policy was issued, which provided liability and property insurance coverage for the farm property and existing improvements. In light of the conversation between the agent and Stuart, the agent gave an oral binder, effective September 1, 2003, to cover the intended new home construction. (An oral binder is an oral contract for insurance that is effective until permanent insurance is approved or rejected.) Stuart did not receive written documentation of this change in coverage until March 2004, when he received a declaration page that a dwelling under construction had been added to his existing AgriPlus policy.

In January 2004, while the new construction was framed but not enclosed, a snow and ice storm hit the area and caused the interior sheathing to split, water to accumulate in the crawl space and mold. Stuart sued the builder for faulty workmanship and obtained a judgment for \$364,101; however, the builder was deemed insolvent and Stuart was unable to collect the judgment.

Stuart then filed a claim under his policy with Country Mutual and was denied coverage on the grounds there had been no “direct physical loss” as required, and because the policy expressly excluded coverage for faulty work, water and mold. Stuart sued Country Mutual for breach of contract. At trial, Country Mutual moved for a directed verdict arguing that Stuart had failed to establish that the oral binder provided coverage for his loss. The trial court denied Country Mutual’s motion and sent the case to the jury. The jury found that Country Mutual had breached the oral binder and awarded Stuart damages of \$268,417.

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Press Release

Horizon Restoration Partners with Oregon Red Cross

The Oregon Red Cross has forged a partnership with Horizon Restoration, a locally owned and operated restoration company with offices in Portland, Salem, Eugene and Bend, to provide hundreds of “comfort kits” to disaster victims across the state. The comfort kits contain more than a dozen full size hygiene products typically needed immediately after a disaster, including toothbrushes, toothpaste, shampoos and shaving kits.

The comfort kits are funded by Horizon Restoration and will be assembled by Horizon Restoration and Red Cross employees at a kickoff event on Tuesday, June 15 from 10 a.m. to 1 p.m. The event will take place at the Horizon Restoration Training Center, 7235 SW Bonita Road in Portland.

“We know that a home fire can be one of the most traumatic experiences a person can go through in their lifetime,” said Jason Redding, president of Horizon Restoration. “The comfort kits give us the opportunity to make a difference when Oregonians are in need, as well as to partner with a great organization like the American Red Cross, which helps families across the state recover and rebuild after these devastating events.”

“This partnership helps us continue to meet the basic needs of our clients, while freeing up funds for other Red Cross assistance after disaster – clothing, lodging, food, prescriptions and much more,” said Maree Wacker, Regional Executive for the Oregon Red Cross.

“The American Red Cross is among the first to respond to the needs of individuals after a fire or disaster,” said Redding. “We have seen Red Cross volunteers in action and are strong supporters of their work. Our company motto is ‘Building People Into the Picture,’ so it feels great to partner with an organization that does so much to help local families in need.” ❖

— Horizon Restoration is an OCAA advertiser. See their ad on opposite page.

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Featured Program	Membership Drive <i>Bring a Friend!</i>
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Topic	Speaker/Topic to be announced

Case Study... *(Continued from previous page)*

On appeal, Country Mutual argued that the trial court erred because: (1) it failed to grant Country Mutual’s Motion for Directed Verdict; and (2) it allowed the jury to consider Stuart’s allegation that failure to deliver the written policy was a breach of agreement and was a direct cause of Stuart’s damages. The court agreed with Country Mutual.

ORS 742.043(1) governs the enforceability of an oral binder for insurance and provides a presumption that an oral binder includes terms that are usually contained within the policy to be provided, including exclusions, “except as superseded by the clear and express terms of the oral binder.” The court determined that Stuart had failed to provide evidence that the oral binder “clearly and expressly waived or superseded the usual terms or exclusions” normally associated with course of construction coverage. Thus, the trial court erred in denying Country Mutual’s motion for direct verdict.

The court also agreed with Country Mutual that the trial court erred by allowing the jury to consider the untimely delivery of the policy, because Stuart presented no evidence that he would have been able to obtain the coverage that he sought had he received the policy timely. ❖

— Full Case available at: www.publications.ojd.state.or.us/A134858.htm

— If you would like to be notified of these new cases, please send an email to caseupdate@smithfreed.com.

This article is intended to inform our clients and others about legal matters of current interest. It is not intended as legal advice. Readers should not act upon the information contained in this article without seeking professional counsel.

News Release

Steve Poore Becomes Certified Renovator

Congratulations to Steve Poore, owner of *Maintenance and More Construction*, an Oregon Coast Contractor, on becoming a Certified Renovator after attending a class sponsored by Willamette Valley Home Builder's Association. This qualifies Steve to manage a remodel or renovation pursuant to EPA's Renovation, Repair and Painting Rule. Steve is one of two contractors to take and pass this class in Tillamook County.

The new regulation will go into full effect on July 6, 2010. To learn more about the new changes in the EPA's rules refer to www.epa.gov/lead/new.htm or contact Steve at 971/998-6385 or 503/965-6570. ❖

— *Maintenance and More Construction is an OCAA advertiser. See their ad on page 14 of our regular newsletter.*