



Title Insurance Agent as Claim Investigator and Claim Examiner

Introduction

In November 2006, Demotech, Inc. published *What We Have Here is a Failure to Communicate – How Traditional Financial Reporting Contributes to Misunderstanding of Insurance Loss Activity*. This landmark analysis describes how and why Title insurance loss adjustment expense is inappropriately reported due to the requirement that Title underwriters utilize a Property and Casualty reporting format. A copy of this analysis is attached.

With *Title Insurance Agent as Claim Investigator and Claim Examiner*, Demotech, Inc. takes the next step by summarizing loss adjustment expense information associated with a sample of Title insurance policies issued in the State of Louisiana. The sample was selected by Melvin L. Maxwell, Esquire, President and Owner of Insured Title Company, LTD in Lafayette, Louisiana. Information provided to Demotech, Inc. was redacted. Customer specifics were neither presented nor summarized.

Claim Process Usually Standardized Within A Line of Insurance

Consider the following: most consumers purchasing automobile insurance are familiar with the business of insurance as it relates to automobile physical damage claims. A typical series of events is associated with the investigation, analysis and settlement of routine fender benders. In such situations, the parties exchange insurance information, file a police report summarizing their respective opinions on the incident and, when applicable, one of the parties may be cited for a traffic offense.

Whenever possible, the respective insurance companies obtain photographs of the damaged vehicles, as well as written estimates of the cost to repair the damaged vehicles. The claimants are then presented with the insurer's proposed resolution – most often, a check for covered damages. Most automobile physical damage insurance claims are resolved quickly and efficiently. The process works fairly well and is well known to consumers, who have likely either experienced a fender bender or learned of the process by word of mouth.

Set forth below are representative instructions related to physical damage to vehicles:

1. *Complete a vehicle accident report*
2. *Forward the form to your claims examiner including:*
 - a. *Complete description of accident*
 - b. *Witness information*
 - i. *Name and telephone number of driver/contact*
 - ii. *Complete information of other vehicle/driver*
 - iii. *Insurance information of other vehicle*
3. *Forward occurrence reports and documentation*
 - a. *Police report*
 - b. *Driver and/or supervisor report*



- c. *Pictures of accident scene (if available)*
- d. *Pictures of physical damage (if available)*

Fax or forward the Vehicle Accident Report to the Claims Examiner responsible for your jurisdiction. The claim form should contain all pertinent information regarding the accident, including a description of the event. Attach to the report any and all reports prepared in connection with the occurrence, including police reports, driver report and supervisor report. Report information will assist in a determination of whether the accident is a Comprehensive damage or a Collision damage claim.

It is important to obtain all information on any driver who may have a damaged vehicle. This information should include the name, address and policy number of any insurer of the negligent driver. This will assist the claim examiner in pursuing a subrogation claim against the negligent driver.

Differences in Coverage Documents Are Critical

In diametric contrast to property or casualty insurance coverage, a miniscule percentage of consumers have experienced a claim related to the business of insurance in the form of Title insurance, i.e., the marketability of title to real property. The extremely limited number of Title insurance claims relative to the number of Title insurance policies issued is owed to incidents, defects and other problems being addressed (cured) prior to the issuance of the Title insurance policy.

As such, the overwhelming percentage of the costs associated with the transfer of marketable title should be considered loss adjustment expenses incurred to eliminate or mitigate defects to the title of the real property. These costs must be expended in advance of the transfer of title, because Title insurance issues and claims are created through the issuance of a Title insurance policy and the concomitant existence of undiscovered, unresolved and uncured matters.

In complete contrast to Title Insurance, Property and Casualty insurers only cover incidents ensuing subsequent to the effective date of a policy. Conversely, a Title insurance policy provides protection against historical events that were undiscovered and not cured through the investigation and examination of the chain of title associated with the real property. Covered events must have existed *prior to* policy issuance.

Typical language in a Title insurance policy states that:

Subject to the exclusions from coverage, the exceptions from coverage contained in Schedule B and the conditions and stipulations, the Title insurance company, insurers, as of the Date of Policy shown in Schedule A, against loss or damage...

In contrast, a P&C insurance policy insures against unknown future events that occur *during* the ensuing policy period. Typical language in a P&C insurance policy states that:

In Consideration of the Provisions and Stipulations herein, this Property and Casualty Insurance Company, for the term of this date at 12:01 a.m. to one year later at 12:01 a.m. at the location of the property involved, does insure...



The series of events associated with the discovery, investigation, resolution and elimination of Title insurance matters must be initiated and completed prior to the issuance of a Title insurance policy. Despite this fundamental distinction in policy terms and conditions, Title underwriters currently report financial information utilizing a Property and Casualty reporting format.

Claim Investigation Occurs Prior to Issuance of Title Policy

To analyze and quantify the cost and scope of Title insurance loss adjustment expense expended to identify and cure title related matters, Demotech, Inc. reviewed a sample of 114 Title insurance files. The source of data was HUD-1s, commitments and the observations of a licensed Title insurance agent who also is a real estate attorney.

Based upon a random sample of 114 files, the Title agents discovery, review and analysis process uncovered 585 matters that needed to be addressed or cured prior to transferring a marketable title. Left unresolved, any of these 585 matters could have resulted in the transfer of a defective title to real property and, therefore, could have resulted in a claim under the Title insurance policy.

Consistent with the provisions of a standard Title insurance policy, expending loss adjustment expenses resolved these situations prior to the issuance of a policy. Claim investigation and analysis was required to protect the interest(s) in real property. In the context of Title Insurance, a Title insurance agent serves as a claims investigator and adjustor, as well as a producer. Further review of the sample aided in the quantification of the cost of the critical yet overlooked role of claims investigator and examiner.

Cost of An Investigation

Based upon our review of the sample, we concluded that 70% of the Title insurance cost on HUD-1s would meet the Property and Casualty definitions of allocated or unallocated loss adjustment expense - currently known as 'defense and cost containment' or 'adjusting and other'. The remainder of the Title insurance cost on the HUD-1s is related to closing, escrow and other service costs.

The estimated loss adjustment expense of 70% does NOT include the losses expected to be paid by the Title underwriter. In Louisiana, the Title insurance loss ratio would represent an additional 8% of Title insurance premium.

To estimate the expenses that are considered loss adjustment expenses, we apportioned the costs associated with Section 1100 of the HUD-1, Title insurance expenses, according to the following allocation process:

	Allocation to Loss Adjustment Expense	Service Costs
Settlement or closing fee:		100%
Abstract or title search:	100%	
Title examination:	100%	
Title insurance binder:	100%	
Document preparation:		100%
Notary fees:		100%
Attorney's fees:		100%



Title insurance premium:	80%	
Title insurance endorsements:	80%	
Mortgage certificates:		100%
Closing protection coverage:		100%
Courier fees:		100%
Bank wire fees:		100%

Title matters identified and cured prior to policy issuance

Instrument filing:	113
Grantor-Mortgagor matters:	113
Tax reconciliations:	113
Materialmen matters:	111
Multiple indebtedness mortgage matters:	26
Tax and lien matters:	2
Cancellation of collateral mortgage:	16
Release of judgment:	3
Release of second judgment:	1
Cancellation of mortgages:	63
Chain of title matters:	14
Release of mortgage, UCC filing or judgment:	4
Donation:	1
Act of distinction of judgment:	3

Summary

In the resolution of a typical fender bender, a claims adjuster relies upon a police report, photographs, investigation and interviews with the claimant(s). In the resolution of Title insurance matters, the Title insurance agent, in his or her role as a claims investigator and examiner, must review a variety of information sources in effort to uncover and cure defects that could become claims. The investigation and examination resolves each matter that is discovered and attempts to ensure that no other situations exist.

In the Louisiana sample, 585 incidents were discovered and cured during the examination of title. These 585 incidents needed to be cured prior to the issuance of the Title insurance policy. Most of the incidents were discovered through the acquisition of an abstract and the analysis of the abstract by the claims investigator. Some of the loss adjustment expenses were specifically expended and allocated to address a specific title defect discovered by the Title agent in his role as claims investigator. Other loss adjustment expenses were expended for purposes of uncovering defects and were, therefore, unallocated loss adjustment expense.

The role of the Title insurance agent, or a title underwriter employee, as a claims investigator and examiner is misunderstood largely in part because Title insurance financial information is reported utilizing a Property and Casualty insurance format. Title insurance loss ratios, collected through a Property and Casualty insurance reporting process, fail to reflect the retroactive coverage provisions of Title insurance coverage documents.



The preliminary analysis of a sample of 114 Louisiana HUD-1s indicated that 70% of the expenses associated with Title insurance charges, Section 1100 on a HUD-1, would have been classified as loss adjustment expense if incurred during the investigation of a Property or Casualty claim.

Given Title insurance practices and procedures, Demotech, Inc. believes that the statutory financial reporting procedures applicable to capturing claim investigation and loss adjustment expenses for the business of Title insurance should be modified and adapted to reflect the retrospective nature of the coverage provided. Revised reporting instructions are necessary to record the time, effort and resources expended on loss adjustment expense prior to the issuance of a Title insurance policy.

About Demotech, Inc.

Demotech, Inc. is a financial analysis and actuarial services firm based in Columbus, Ohio. We provide services to Property and Casualty insurers and Title underwriters, including actuarial consulting, loss and loss adjustment expense reserve analysis, Financial Stability Ratings[®] (FSRs) and support for other required regulatory reporting. Having worked with insurers of all sizes, Demotech possesses extensive actuarial and financial analysis experience to address issues unique to a particular insurer, or prevalent throughout the industry.

About Joseph L. Petrelli

Joseph L. Petrelli's consulting experience includes loss and loss adjustment expense reserve evaluations for property and casualty insurers, title underwriters and self-funded public entity liability insurance pools. He developed the first Property and Casualty insurance company rating system to be formally reviewed and accepted by Fannie Mae, Freddie Mac and the United States Department of Housing and Urban Development.

In 1996, when the National Association of Insurance Commissioners required a statement of actuarial opinion regarding loss and loss adjustment expense reserves be provided by title underwriters, Petrelli coordinated the first seminar on that topic on behalf of the Conference of Consulting Actuaries. Actuaries, auditors and other professionals attended.

With regard to pricing assignments, Joe has prepared thousands of rate level recommendations and product reviews on behalf of title underwriters and Property and Casualty insurance companies throughout a thirty-seven year career.

Prior to forming Demotech, Inc., from 1980 through 1985, Petrelli was self-employed as a consulting actuary. He was employed by Property and Casualty insurance companies from 1969 through 1980. Petrelli expanded his career with a degree of Actuarial Science from the College of Insurance in 1974 and an MBA from Ohio State University in 1985. He continues to expand his professional and industry knowledge as a longstanding member of the American Academy of Actuaries, Associate of the Casualty Actuarial Society, Fellow of the Conference of Consulting Actuaries and Member of the Society of Financial Examiners.

About Melvin L. Maxwell, Esquire

Melvin L. Maxwell is President and Owner of Insured Title Company, LTD. He began his career as a graduate of Southwestern Louisiana Institute in 1960, furthering his education with a degree from the New York Institute of Finance in 1968, followed by his Certified Financial Planner (CFP) in 1975 and a law degree from Louisiana State University Law Center in 1982.



Maxwell continues to expand his professional and industry knowledge with membership in the following professional organizations: *American Land Title Association, Board Member of the Louisiana Land Title Association for the past 14 years, American Bar Association, Louisiana Bar Association, American Mortgage Bankers Association, Louisiana Mortgage Bankers Association, Member of the National Association of Home Builders, Acadiana Home Builders Association, Realtors Association of Acadiana, and Fellow of the Louisiana Bar Foundation.

* He also served as the president of the Louisiana Land Title Association.