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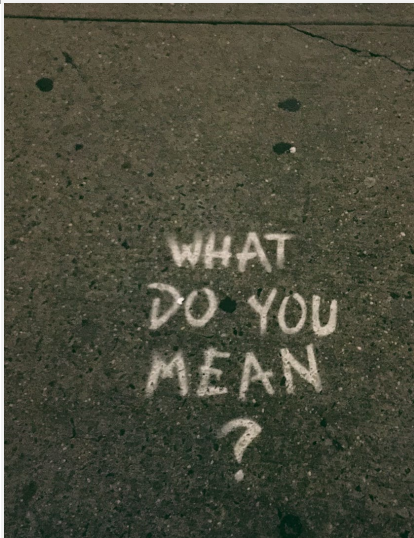
MINET THOUGHT LEADERSHIP

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HOW TO DECIPHER AMBIGUITY IN INSURANCE

July 11th, 2023



In a swimming gala, one is not allowed to mix swimming styles in a stroke. If one is participating in a backstroke, the styles that are allowed are those related to a backstroke. You get disqualified if you apply a side stroke style during a backstroke. The opposite holds true. This is the ground rule in swimming competitions - one style in a stroke. The same applies to insurance. When a word, in a policy, denotes more than one meaning, that word must be made clear to which of the meanings it is being applied. Every word must be intelligible.

When drafting a policy of an insurance contract, an insurer may use terms as he wishes as long as he is within the ambit of law and standard practice. It's not uncommon for risks to be insured in one policy and excluded in another policy. It is possible, too, to insure a risk in the underlying operative clause and exclude it under

exclusions in the same policy as long as the exclusion is clarified. For example - in a fire insurance policy, damage to property by fire is an insured peril and is expressed in the insuring clause. However, the same peril is excluded from cover if its cause is deliberate on the part of the insured party.

As long as the phraseology of words is clear and spelled out in plain language, mediators or arbitrators have no problem determining the direction of a claim in case of a dispute. However, when the terms are unclear or ambiguous, they must be confirmed according to the terms' plain meaning. Prudent underwriters usually provide the meaning or interpretation of the most commonly used words or terms in a policy's glossary.

In insurance, the rule of thumb is that when there is ambiguity in a policy, the ambiguity is construed against the drafter. Most policies are drafted by insurers, so the ambiguity is interpreted against them. The logic behind this exposition is that it's the insurer, not the insured party, who knows that a certain word or term has a special meaning in the policy. Yet, if the wording is a manuscript, clearly the insured party bears the onus. A manuscript is a policy wording that is crafted and provided by the insured party or their agent.

More often than not, ambiguity in insurance policies is created by silence. If a policy talks about a general kind of coverage but at the same time makes exclusion with an endorsement, one may interpret by inference that coverage has been written off or withdrawn. Once a general term of



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coverage is established, all relevant risks are covered under it, unless the underlying policy certainly writes the risks off by endorsement.

When ambiguity is created by silence, it is important to make a note of the type of insurance that you are referring to. The point is, silence in a named-peril insurance, such as a fire policy, denotes no cover. Conversely, in an all-risks contract, such as an electronic equipment policy, silence signifies cover. For example, if "storm" is not mentioned as an insured peril in a fire policy, then it is not covered. The story is different in an electronic equipment insurance. As long as "storm" does not appear on the list of exclusions, it becomes an insured peril, although it is not mentioned or expressed in the policy.

Caveat. Most insurance policies have multiple sections. In such cases, it is important to understand that one section of a policy cannot be read or interpreted to contradict another section in the same policy. Policy sections are not read in isolation. No. All relevant sections must be read together. They support - not oppose - each other. This includes all other documents that an insurer may have given an insured party ahead of the issuance of the actual policy document. The proposal form is a case in point. A proposal form is taken as the basis of an insurance contract. I always give this advice to my clients: *'Do not throw away your proposal form upon being furnished with a policy document.'*

As I write this article, there is a strong campaign by insurance ombudsmen and regulators worldwide that insurance policies ought to be read and interpreted as a man-in-the-street (common man) would read and interpret it, not as a lawyer or an insurance expert would. Stated differently, policy wording must be simple, clear, and to the point. This is the antidote to ambiguity in insurance.

Lester Chinyang'anya | General Manager - Operations | Minet Malawi