

# Asia-Pacific Underwriting & Claims WATCH

An Introspective View of Retrospective Underwriting

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## Foreword

Following the positive feedback we received from the inaugural edition of our Product Development WATCH SCOR *inFORM*, I am pleased to introduce the first edition of our new regular newsletter on Underwriting & Claims.

While the Product Development WATCH focuses on the product developments in the Asia-Pacific region, this newsletter aims to present developments in the Underwriting & Claims arena.

In this first edition, we are pleased to showcase on Retrospective Underwriting contributed by my colleagues in the recently launched Sydney Life subsidiary of SCOR Global Life.

I hope you will find the newsletter interesting and please do not hesitate to provide us with your comments/feedback.

Thank you and best regards

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The Australian reputation for being “easygoing” may not be as it was over 10 years ago, with the per capita rate of litigation in the country increasing to be one of the highest in the world. Australians are now, more than ever, inclined to have their grievances heard by courts and tribunals, with the hope that they will be remunerated for any actual or perceived losses.

So where does this leave Australian Insurance companies, who on a daily basis, decline applications for insurance, or claims for benefits on death, trauma, and disability?

Over the last 10 years, one of the key messages that Australian Insurers have been delivering to their Underwriters and Claims Assessors is that every case they assess can lead to litigation, whether it be now or in the future. Their file notes and justification for their decision thus needs to be clear, accurate and as detailed as possible from the start.

Since the introduction of Insurance companies, the role of the Underwriter has been to make competitive, but risk aware, decisions that ensure the profitability of the Insurer, and even today, this has not changed.

However, the same cannot be said historically about the Claims Assessor who traditionally been regarded as a poor cousin of underwriting. Today, it is now being recognized more so than ever that, a Claims Assessor has the same ability to ensure the profitability of the business, by only paying claims that fit the policy definition and determining whether there has been any non-disclosure or misrepresentation on the part of the Claimant when they applied for the policy.

For this reason, Retrospective Underwriting or “re-underwriting at claims” has been included as a key activity in every Australian Insurer, with the Claims Assessor ensuring they have a strong argument for their decision, should the claim be denied or modified due to non-disclosure or misrepresentation, and legal action taken by either the Claimant, their Estate or the Insurer themselves.

So before we explain what can happen should the claim case proceed to litigation, and why it is crucial that the file notes and justification is prepared properly, we need first to be aware of the key roles in the Retrospective Underwriting process and the impact that the Australian Insurance Act has on Retrospective Underwriting.

## Retrospective Underwriting Roles

### The Claims Assessor

The Claims Assessor, on every claim, must thoroughly review all the information obtained on the Claimant at time of underwriting, including what the Claimant has disclosed at time of application, all information obtained by the Underwriter, the underwriting notes, and all insurance policies held by the Insurer no matter when they were accepted.

This information must then be reviewed in comparison to the information disclosed at time of claim, so that they can determine if there has been any non-disclosure, or misrepresentation, of information that could impact payment of the claim.

### The Underwriter

If an Underwriter is brought into the Retrospective Underwriting process, it is due to the fact that the Claims Assessor has determined that the Claimant has not provided all the information that was relevant to the risk being assessed. The Underwriter must then provide the Claims Assessor with a new assessment, taking into account the new information, with supporting evidence such as Insurer &/or Reinsurer Underwriting Guidelines. It is important that, any guidelines used, are those relevant for the time the policy was accepted and, if these cannot be provided, the Underwriter needs to provide examples of similar cases to support the decision.

### The Insurer

On obtaining the review by Underwriting, as part of the due process, the Claims Assessor should write to the Claimant, to ascertain why the information was not disclosed, or accurately reflected, in the personal statement. This enables the Claimant to give their version of events, and ensures that the Insurer is seen to be reasonable as, for example, the Claimant may not be aware that their pre-application blood pressure was high as their Doctor may not have told them, that high blood pressure and hypertension are the same thing or, as a layperson, what a high blood pressure reading is for their age.

Following receipt of the response from the Claimant, the Claims Assessor needs to determine, in working with their Chief Medical Officer, the Reinsurer, internal Legal representative and external Legal counsel, whether they should recommend to the Insurer that the claim be paid in full, make modifications to the policy or retrieve any benefits paid to date. It may seem to be an easy decision, however the

potential legal costs and negative publicity needs to be taken into account when making this decision. For example, if the strength of the supporting evidence is not what it should be, the decision may be to continue paying the claim, as the additional expense of a Court hearing will only make the overall expense worse not forgetting the negative publicity that may ensue.

## The Australian Insurance Act 1984

The Australian Insurance Act 1984 regulates the insurance industry and insurance policies in Australia, and is intended to ensure that a fair balance is struck between the interests of the insurer and the insured. This, at times, can limit what actions the Claims Assessor and the Insurer can take, even if it is found that they did not have all the information at the time of the Claimant applying for the cover.

Under this Act, if during the course of assessing a claim, the Claims Assessor determines that the Claimant did not disclose relevant information to the Underwriter, the Insurer can take certain actions.

### If the Policy is less than 3 years old

If the claim occurs in the first 3 years of the policy, and it is determined by the Underwriter that they would have still offered the policy, but under different terms, had they have known of the new information, the policy can be modified retrospectively by including loadings or benefit modifications. An example of this is, if it is found that, at time of the policy inception the Claimant was a Smoker and not a Non-Smoker, as disclosed, the total sum insured to be paid would be reduced to take into account the increase in premium rate the Claimant should have been paying annually.

However, if it is determined that, they would not have accepted the policy under any terms had they known of the now disclosed information, the Insurer can cancel the contract from inception and refund the premium paid, without having to prove fraud.

### If the Policy is more than 3 years old

If the claim occurs outside the first 3 years of the policy, it is no longer enough that the Insurer show that they would not have entered into the policy had they known of the new information. They must prove that fraud has occurred before they can avoid the policy.

Take for example a Claimant has Life & TPD cover under the same policy and is claiming for TPD. The Insurer would never have offered TPD cover had they known of the new information regarding the Claimant’s medical history. This is however not a valid reason to avoid the claim unless the Insurer can determine fraud, as the Insurer would have still offered a policy for Life cover. It should be pointed out that, the Act does not address the question as to what constitutes fraudulent non-disclosure or misrepresentation and it is therefore determined when presented to the Courts. For non-disclosure or misrepresentation to be fraudulent, the Claimant must have deliberately failed to disclose the information, or the true nature of their circumstances, and it is this that must be proven.

## Underwriting and Claims File Notes

When training Underwriters and Claim Assessors, one of the most critical areas addressed, is the need for thorough file notes, which summarize the file and evidence, whilst also detailing how each decision during the assessment process was reached. This is such a critical area that, every Insurer includes the valuation of these notes in their quality audit, which is linked to the Underwriters and Claims Assessors Key Performance Indicators, which impact their overall bonus i.e. if they have made the correct assessments, but not summarized their files correctly, they may not receive their full bonus.

File notes have always ensured that, when a new application is reviewed in the future by an Underwriter, they can follow the previous thought process to determine what has been happening with the file and proceed with the next part of the assessment. In addition, these file notes have taken on an even greater role, as it can now be years later that they are reviewed to determine what the thought process was at that time and to determine what impact the newly discovered information will have on the policy at claims stage.

Historically, Legal Counsel has utilized the expertise of the original Underwriter who has assessed the case to provide their opinion and provide an “expert witness” testimony should it proceed to the Courts. However these days, it is very likely that the original Underwriter who assessed the policy may have left the Insurer and even if they are around, they may be asked to review a policy that they assessed many years earlier for which it may no longer be fresh in their minds. The above situations underlines the importance for thorough file notes to be maintained.

The claims file notes completed by the Claims Assessor need to document everything that has occurred from the time the Claim is submitted, as it is possible that, should the Claimant or the Insurer choose to engage in litigation, it may take years, for it to be addressed by a Court. During this time, the file will be reviewed by numerous parties, including Legal Counsel for the Insurer and the Claimant, the Chief Medical Officer and any 3rd party Medical Specialist, so they must ensure that their assessment, with a timeline of events, is as detailed as possible.

### Day in Court

Unfortunately, or even fortunately, life is not like in the movies, where the Lawyers and Judge involved in the litigation of a case, are humorous, forgiving, or even flirt with the expert witness' during the proceedings. In real life, the Insurer's and Claimant's Lawyers roles, are to ensure that their client's side of the argument is heard, whilst the Judge determines whether both parties have acted appropriately and makes the decision on what the outcome should be, based on the facts, and only the facts!

As a Lawyer's role is to win the case for their client, they will exploit any weakness in the opposing argument for their client's gain. It is therefore critical that:

- ▶ The Claims Assessor, as the person responsible for the entire file, knows all areas of the case in detail, including the history, based on their thorough file notes and be empowered to make a decision for the Insurer, should they feel that a settlement can be reached to avoid a lengthy Court hearing.
- ▶ The Underwriter, acting as an expert witness in the case, knows the relevant areas of the file in detail including, what they have stated in their original file notes and/or their Retrospective Underwriting File Notes, and what supporting Insurer/Reinsurer Underwriting Guidelines they have used.

In summary, a credible Underwriting Witness and Claims Assessor, is one that is prepared, as should the final decision be left to a Judge, there is only one opportunity to present their argument right.

In Australia, every case assessed today, and in the future, by an Underwriter and Claims Assessor, needs to be prepared for possible future litigation and justification of their decisions, so how "easygoing" can we really be?

### SPECIAL FOCUS ON TRAINING PROGRAMMES OFFERED BY SCOR GLOBAL LIFE

#### Correspondence-based Underwriting Programme (C.U.P)

We understand continuous training is key to improvement in productivity and underwriting efficiency. As such, we hope to invite interested underwriters to register for our correspondence-based underwriting programme. Each month, an interesting case study will be selected for the underwriter to analyse and assess and these cases will be selected from both areas of medical and financial. Moving on, we have plans to include claims cases as well later. The recommended solution together with relevant readings will be provided the following month alongside a new case study. The whole exercise will be conducted via email exchange.

We have launched the C.U.P as of July 2011. Registration is easy. Just indicate your interest to your local SCOR representative or write to [Lifefasia@scor.com](mailto:Lifefasia@scor.com). Our training co-ordinator will be in touch soon after to provide more details on the programme.

#### Asia-Pacific Customised Training Programme

In 2010, SCOR Global Life Asia-Pacific launched the Asia-Pacific Customised Training Programme for our esteemed clients.

Under the Customised Training Programme, we aim to offer specific trainings designed to enhance your company's operational and technical efficiency. These training modules will be tailor-made to meet your company's specific needs.

Conducted at your convenience and at your office, the programme aims to share our technical know-how and expertise with our business partners. Each training session will include practical case studies where applicable and discussion on key issues with participants.

Please do not hesitate to contact your local SCOR Global Life representative for more information. If there are other areas of training which are of interest to you, please feel free to provide us your feedback.

If there is any feedback/comments you wish to share with us please do not hesitate to contact the local SCOR Global Life offices listed below.



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