

## **IN A HURRY TO GET TO DESTINATIONS NOT CONSIDERED:**

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It is often said that the police and firemen run towards the danger when others are running away from the danger. Thing is, the danger is generally a known danger, not an unknown one.

The moves by insurers may be more daunting than they realize. Have you ever wondered why when you buy software, with it you are provided a rather lengthy notice outlining its limited warranties and generally telling you what it will not do? As well, think back when you bought that insurance policy for its investment purposes to resell it later in the market... you haven't? Which are you more likely to do, sue an individual human being or sue a faceless conglomerate corporation?

Commoditization is the buzz word in the insurance industry; the presenting of insurance as if is a fungible good in its marketing process. Selling on price alone, trying to shape the industry into something that can successfully copy the success of Amazon. Close on its heels is "Blockchain", praised for its "open distribution ledger" in the transaction process. With it is its cousin, big data, trying to minimize the human touch and handle the entire insurance process by using data alone in its stead.

There are elements that are likely to get in the way of a smooth run at these efforts by insurers.

The legal definition of "commodity", the root word for commoditization, in it you will find the word "good" – any article of moveable or personal property. When speaking about goods, to the practicing attorney in the USA, the Uniform Commercial Code (UCC) comes to mind, specifically Article 2. Under the UCC, "Goods" means all things which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Article 8) and things in action. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time.

A quick note is that the US courts have determined software to be a good/commodity. Explaining the difference to the jury the distinction in an insurance policy being downloaded from the internet not being a good and that software being downloaded from the internet is a good, brings up the possible scenario of the "commoditized" insurance policy sold by the unaware insurer may find itself subject to a completely different branch of law than it is used to, the UCC and with its rules and warranties. With the UCC includes the warranty that the "good" (commodity) is fit for an ordinary or the specific purpose which may only be changed by amending it with a written exclusion or modification of the warranty. Now you know the answer to question one (1) above. Software is a good/commodity which provides for them having to give you a notice limiting or excluding the UCC warranty. At the present time Insurers do not provide you notice limiting or amending any UCC warranties, but that may change.

Block Chain, it may provide a distinct advantage in the transactional process. However, the transactional process in insurance is rather short, there is not various payment networks generally involved. The seller sells and the buyer buys and for the most part, the transaction is complete. Once bought the buyer cannot then resell the commodity/good on the open market; insurance is not commercial paper. Commercial paper is a written instrument or document that manifests the pledge or duty of one person to pay money.

One of the most significant aspects of commercial paper is that it is negotiable, which means that it can be freely transferred/assigned from one party to another, either through endorsement or delivery. The terms commercial paper and negotiable instrument can be used interchangeably. However, the insurance policy itself prohibits such commercial paper marketability and negotiability via internal contract prohibitions against its easy transfer/assignment to another. (Prohibitions against assignment of the policy without specific written consent.)

The UCC identifies four basic kinds of commercial paper: promissory notes, drafts, checks, and certificates of deposit. The most fundamental type of commercial paper is a promissory note, a written pledge to pay money. A promissory note is a two-party paper. The maker is the individual who promises to pay while the payee or holder is the person to whom payment is promised. Insurance could be considered a conditional promissory note (conditioned on the happening of a covered peril causing damages to the insured property whereby the insurer pledges to pay). Now you realize why you didn't recall buying insurance as commercial paper for its investment purposes, you can't.

Big data is seen by some insurers as a fix to the "brain drain" caused by the retiring baby boomers that are skilled in the insurance "arts", rather than actually training newer employees in what has been a successful historical model in insurance. Removing the personal touch in the equation may be a mistake. Walking into Walmart you are often greeted with a friendly hello by the official greeter. Walmart brought them back after an unsuccessful cost cutting experiment removing them resulted in an uptick in both law suits and shoplifting. As innocuous as the initial move sounds, the fact is people do not sue or steal as often when it involves a human personality as when it only involves a big faceless corporation. I write elsewhere "go ahead insurers, cut out the personal touch, the Plaintiff's bar will be glad to step in to that spot when their client is now more likely to sue you." The answer to question 3 is that for most people, suing a faceless corporation is generally not an issue for them.

Summarizing:

1. Commoditization may lead to application of the UCC against unsuspecting insurers
2. The Block Chain advantages in commercial paper/negotiable instruments/open transactions is lessened by the realities that the insurance policy prohibits ease of transferability and insurance does not possess the attributes of Amazon, although insurers would like to emulate its marketing success
3. Removing the personal touch in the insurance process may increase the likelihood of being sued.