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Understanding the Players: Who Are They? What Are Their Roles? How Do They Operate in Practice?

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“Agents’ and ‘Brokers’: Texas Statutory Definitions and Rule-Entailing Characterizations”, Michael Sean Quinn, Journal of Texas Insurance Law, Fall 2007, Vol. 8, No. 3.

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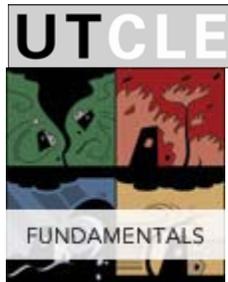
Thank you to my colleague, Allyson Wilkinson, for her contributions to this presentation.

About the Author

Stephanie Rennell Tippit was born in California. Her family settled in Houston, Texas in 1978. She attended school in Cypress-Fairbanks ISD and graduated from Cypress Creek High School. Mrs. Tippit studied ballet for many years in Houston, Boston and New York City. Upon graduating from high school, she danced professionally for Boston Ballet II and Tulsa Ballet Theatre. Mrs. Tippit graduated from the University of Utah with an Honors degree in Economics and International Relations. While in Salt Lake City she learned to enjoy snow skiing, camping, and hiking. She then earned her Juris Doctorate degree from Tulane Law School in New Orleans. Mrs. Tippit practiced law in New Orleans for six years before returning to Houston where she joined the law firm, Hall Maines Lugin, P.C. Mrs. Tippit's current practice is concentrated in insurance coverage litigation.



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Understanding the Players



Written and Directed by
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Play Synopsis

Act 1

Scene 1 Assessing the Risk
Scene 2 Placing the Risk

Avoidance, new to her position at an international corporation, places confidence in Deal whom she met a week earlier at a business conference. She tells Deal what she thinks her company needs are, but Deal, thinking he knows best, explains to Avoidance what is better. He promises to bring her a great deal in a week. Avoidance is relieved.

Deal, thinking he can count on his old friend Cool, makes a call. He is shocked at Cool's questions which he cannot answer. Deal feels desperate and angry. He quickly realizes he may have over promised to Avoidance who is facing a deadline.

In an amazing deal making frenzy, Deal makes it happen for Avoidance.

Act 2

Scene 3 Claim Made
Scene 4 Claim Investigation

After a few months, Avoidance gets a call that a huge explosion happened at the site of an operation in the North Sea. She calls Deal. He assures Avoidance that her company will not suffer any loss.

Once again, Deal did not anticipate Show Me Why. She is experienced with explosions and knows Cool's policies well. Show Me Why sends Smart to the site to investigate. His reports cause Show Me Why concern which she expresses to Avoidance. Avoidance is baffled and angry.

Act 3

Scene 5 Claims Handling

Deal is able to calm Avoidance and they work with Smart and Show Me Why. After a few months, they are able to find some common ground. Show Me Why agrees part of the explosion is a covered loss and pays it. As to the remainder, Show Me Why is left with no choice but to deny the claim. Avoidance is devastated. She trusted what Deal told her and she made promises to her company's board.

Act 4

Scene 6 Litigation

Avoidance feels betrayed. She hires Mr. Finger Pointer. Show Me Why hires Mr. Head Shaker. A lawsuit ensues and the result is shocking.....

Cast of Characters

Ms. Cool Nerves...Underwriter...Helen Mirren

Ms. Avoidance Risk...Risk Manager...Natalie Portman

Mr. Deal Maker...Broker...Alec Baldwin

Ms. Show Me Why...Claims Handler...Lucy Liu

Mr. Smart Guy...Loss Adjuster...Robert Downey, Jr.

Mr. Head Shaker...Lawyer for ABC Insurance
Company...Matthew McConaughey

Ms. Finger Pointer...Lawyer for XYZ Corporate Insured...Joe
Pesci

Setting

Scene 1 Avoidance's office

Scene 2 Broker's office

Scene 3 Avoidance's office

Scene 4 Show Me Why's office

Scene 5 Smart's office

Scene 6

GLOSSARY OF TERMS

Note: This glossary is general and is not designed to be comprehensive or exhaustive. Each insurance transaction is unique in many ways. The types of individuals involved may differ. Even for each type, the role of the individual may differ. It is always important to study the facts of a particular situation so you can truly understand who the “players” are, what their roles are, and how they operate in any one instance.

Additional Named Insured: A person or organization not automatically included as an insured under an insurance policy, but for whom insured status is arranged, usually by endorsement. A named insured's impetus for providing additional insured status to others may be a desire to protect the other party because of a close relationship with that party (e.g., employees or members of an insured club) or to comply with a contractual agreement requiring the named insured to do so (e.g., customers or owners of property leased by the named insured).

Adjuster: A person who investigates the loss, determines the coverage, and settles claims. Typically an employee of the insurer (staff adjusters). More particularly referred to as a “claim” adjuster as distinguished from “independent” or “outside” or “loss” adjuster.

Agent (Insurance Agent): A person or organization who/that solicits, negotiates, or instigates insurance contracts on behalf of an insurer, and can be independent or an employee of the insurer. Insurance agents are often the legal representatives of insurers, rather than policyholders, with the right to perform certain acts on behalf of the insurers they represent, such as to bind coverage. See also Texas Insurance Code definitions.

Appraiser: A person or firm who/that is hired pursuant to the terms of a policy's appraisal clause to appraise the value of damaged property. Engaged to resolve a dispute between them as to value of insured property made subject of a claim. Typically a neutral party agreed upon by the insured and insurer.

Broker (Insurance Broker): A person or firm who/that represents the insured in various insurance related transactions such as negotiating and procuring an insurance policy, and/or in managing claims or losses under the policy. Brokers also may assist the insured in assessing risk, evaluating insurance policies and programs, obtaining insurance quotes, and liaising with the insurer in the claim process. Brokers often have the right to act on behalf of insureds to bind coverage. However, some brokers do have agency contracts with some insurers, but in such instances, they usually remain obligated to represent the interests of insureds rather than insurers. See also Texas Insurance Code definitions.

Captive: An insurance company that has as its primary purpose the financing of the risks of its owners or participants. Typically licensed under special purpose insurer laws and operated under a different regulatory system than commercial insurers. The intention of such special purpose licensing laws and regulations is that the captive provides insurance to sophisticated insureds that require less policyholder protection than the general public.

Cedant: A ceding insurer is an insurer that underwrites and issues an original, primary policy to an insured and contractually transfers (cedes) a portion of the risk to a reinsurer. A ceding reinsurer is a reinsurer that transfers (cedes) a portion of the underlying reinsurance to a retrocessionaire.

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"Understanding the Players: Who Are They? What Are Their Roles? How Do They Operate in Practice?"