Mackenzie Coplen: Hello everyone and welcome to the ABASolo Small Firm in General Practice Division, Hot Off The Press Live PodCast. My name is Mackenzie Coplen and I'm the Vice Chair of the Book Publication Board. Today, we will be speaking with Barry Zalma, and he is the author GPSolo’s book, the Commercial Property Insurance Policy Desk Book.

The presentation will be concluded with a question and answer session, which the operator will facilitate. The Commercial Property Insurance Policy Desk book is an indispensable resource on acquiring a commercial property policy and presenting and collecting first party property insurance claim.

Barry Zalma now limited his practice to services as an insurance consultant, specializing in insurance coverage, insurance claims handling, insurance bad faith and insurance fraud, almost equally for insurers and policy holders.

He also serves as an arbitrator and mediator for insurance related issues. He practiced on California for more than 44 years as an insurance coverage in claims handling lawyer and more than 50 years in the insurance business. He is available at www.zalma.com, over the last 51 years very dedicated life insurance. Insurance claims and they need to defeat insurance fraud. He has created a library of books and other materials to make it possible for insurers and their claims staff to become insurance claims professional.
And now, I'm going to turn the call over to Barry, who is joined us here today to talk a little bit about his book and give us some insight into this topic. Barry?

Barry Zalma: Thank you McKenzie. The book is basically what needed is, a lawyer's client owns commercial property, wants to insure commercial property or has a claim that he or she needs to present to an insurer. Then, it starts out basically explaining to the reader, thinks that for some reason scare laypeople employers and that is it explains what insurance is? And how to read an insurance policy without fear and trembling. Because the modern insurance policy including the basic commercial property policy that was written by the insurance services office and is used by most insurers is by law written in easy to read or what I call Sesame Street English, which means almost anyone can understand.

It's difficult for lawyers because we as lawyers are more interested in precise language. And before the laws were passed requiring the easy to read language, we had insurance contracts that have been evaluated by courts over a 100 years and every word have been interpreted, and then all of the sudden, we get fourth-grade language that nobody truly understands, although it's clearly easy to read. So, what I've done is explain how courts construct and interpret insurance contracts, and then I take you through the basic commercial property policy basically line-by-line explaining the different types of coverage and how to read the policy language.

When we tried to talk about property loss, everybody gets upset when their property is damaged. You can have anything happen to your property from a falling spacecraft to a car driving through your front door because loss of control making a left turn to an accidental fire, earthquake, or flood. All kinds of things are subject to causing damage to real and personal property.

And the idea of a commercial property policy is to take that risk of loss with regardless of cause of the owner of the property spread it amongst all of the people who are insured by that insurer. So that the risk can be taken
for fairly small amount of money in comparison to being totally uninsured and having a three million dollar building burned down and having to take the risk yourself.

It explains also that insurance policies do not cover everything. And a commercial property policy is known as a first party property policy for first party policy because an insurance part once the first party is the insured, the second party is the insurer, and the third party is someone who might suffer loss due to liability, which this book doesn't talk about that will be some other book if I ever get around writing it.

But since the policy only provides coverage for a contingent or unknown event whether is part of it is that, that is the definition of insurance. You cannot buy fire insurance or commercial property policy on the building the day it burns because then that event that you're insuring against is not contingent or unknown.

And you can't set fire to the building to intentionally cause damage in therefore profit from your insurer, because again that's not a contingent or unknown of that. It is a fraud. So, the policy then adds things, makes it interesting for you because if you have a loss and it's a legitimate loss, say electrical fire or burglary or automobile running in your building, you have to make a claim. The first condition of the policy is that you are required as insured to make the claim promptly. So that the insurer can thoroughly investigate the loss in claim.

And most states allow for a late report under what they call the Notice-Prejudice Rule and that is if you report late and it doesn't prejudice the insurer or they are not going to hold it against you. Other states like the State of New York may just hold it against you and if you don't report the lost property, you may recover nothing.

The other conditions and we discuss all of the important conditions, please see to recovery under the policy. The first being noticeable loss. Second thing cooperation with the investigation of the insurer. There is a requirement that you produce documents to prove your loss and
eventually that you submit a sworn statement in proof of losses which is the presentation of the claim, this is not easy.

And it is something that requires work either by being insurer or the insurer's representatives that being a lawyer or an independent public insurance adjuster retained by the insurer and the attorney to represent the insurer in presenting the claim to be insured.

The insurance should be aware that in the event of a loss whether he's using a lawyer or a public adjuster or doing it all by himself where the company's risk manager. The first thing that happens after a loss notices received as an adjuster will contact the insured and the adjuster will seek to reach an agreement with the insured or the insurer's representative the scope of the loss.

And in that way, they will go through the structure and note whatever the damages are. This wall has to be torn out and replace this door and window need to be replaced, the entire building burnt to the ground and there's nothing left and it needs to be rebuilt the way it was before. Whatever the amount of damage that scope of loss will limit by the agreement of the insured and the insurer.

The people who did on replacement so that where bids can be compared and amount of loss agreed too. That's basics, it takes anywhere depending on the extent of the loss from 15 minutes to 3 days to do it. Sometimes then in handwriting on an notepad, sometimes it's recorded orally on a digital recorder, sometimes it's done with the video recorder. There are more ways than one to create a scope of loss and the most accurate should be obtained and you is the representative of the insurer or if it's your own claim, should be provided with copies of the scope of loss. So that you can have your own people did just as well as the insurers, people are bided.

Coverages can be specific to particular structure or can be a blanket coverage over multiple structures. There are mortgages involved and if there are the insurance policy can have several different types of mortgage
clauses and it's important to your client and the owner of the property. And its mortgage holder, that the most appropriate mortgage clause is attached.

The basic mortgage clause is called the loss payable endorsement, which merely says that in the event of a loss. The insurance company will pay the insured and the mortgage holder directly. And that's a very simple clause that has no real protection for the mortgage holder. If the insurer does something or insurance company rejects his claim.

Then there's the union mortgage clause ISO form 438 BFU, which provides that not only will the mortgage holder be paid at along with the insured in the event of a loss. But if or some reason, say the insurer related the claim of are submitted profit and the insurance company denied the claim of the insurer. The insurance company would still be required to pay the mortgage holder up to the mortgages interest in the property.

But that doesn't mean it'll pay the entire claim unless the amount of the debt is equal to the value of the property or the amount of the loss. And in the event that the mortgage holder is paid and insured is not. The insurer will expect and obtain an assignment of the mortgage from the mortgage holder and then those on the property to recover whatever we paid.

There is the basic claim requires you to understand what an adjuster is and why there is an adjuster. The basic insurance policy does it even in most cases mentioned the word adjuster. In fact the original fire insurance policy, the standard statutory fire insurance policy requires that the insured within 60 days of the date of loss and have been a proof of loss. And proved his claim to the insurer, with the insurer doing absolutely nothing.

Well that didn't work out very well because most people didn't know how to deal with it and as a service to their clients to the people buying the insurance, the insurance industry developed the claims adjuster. Claims representative claims handler and individual who is knowledgeable not
only about insurance policies. But about the way buildings are built and
rebuilt and how to deal with reconstruction of the damage property.

And this individual was provided to the insurance buying public to help
them improve their loss. And also to conduct a thorough investigation on
behalf of the insurer to establish one that the policy existed was in force
and provided coverage for the type of loss that occurred. And to help in
the event of fraud to investigate sufficiently to prove prodded avoided.

With that, action by the adjuster acting fairly and in good faith because
every insurance contract, there is presumed and implied covenant of good
faith and fair dealing. We insured in the insurer could then agree on the
amount of loss and work together to present the proof.

Now, some people were unhappy with the work of the company insurance
adjuster and that created the profession of the public insurance adjuster or
public insurance assessor, who works only for the insured to improving
the loss to the insurance company.

And they are usually people who work for insurance companies is
insurance adjusters, knowing the trade, and they decided they could make
more money working as a public insurance adjuster obtaining a
contingency fee. And the contingency fee charged by public adjusters can
range viably. And it is up to the insured and especially the insurance
lawyer.

If a public adjusters to be used who negotiate a fair and reasonable
contingency fee. The public adjuster will usually start out with a high fee
and the lawyer and insurer should understand. But the public adjusters’
fee is negotiable. And it's negotiable depending on the extent of the loss.

For a small loss of less than a hundred thousand dollars, for example they
would probably seek 10 to 15%. And they'd seek the exact same amount
or more for a major loss. But those percentages because there's a great
deal of competition in the public adjusting fee can be and usually are
negotiated now. And if I personally suffered a major loss, I would
probably because time is of the essence and my skill levels are more as a lawyer than as an adjuster, negotiated fee down to around 3%.

If on the other hand, a public adjuster offers a 0% fee, he must be highly concerned because this public adjuster is less than honorable as expecting to make money by receiving kickbacks before who work to rebuild the structure and that maybe unfair.

And potentially put your client in the position of fraud. The insurance adjuster all concerned with basic subrogation and salvage rights. Because every insurance contract allows if the insurer who's paying the debt of it's insured to recover from anyone responsible. So that if your client always in property damage because the car driven or by an individual Mercedes Benz owner or a semi-tractor trailer runs into his building, the insurance company will pay and then as soon the rights of the insured to issue the owner of the vehicle will negligently ran into the building to get his money back.

And if there's any salvage, the insurer is entitled to collect the salvage anything of value left after the damage that needs to be disposed of to reduce the net amount of its loss. We discussed in the book also how to repay the lawyer for an insurance coverage issue. We discussed how they retained lawyers for the subrogation in salvage. And we discussed the fact that most commercial property insurance policies allow for the insured to waive the insurers write to subrogation.

This is usually in cases where the insured for instance a commercial property over waives the right of subrogation against one of his payment as a condition of the lease. And it's important to make sure that the insurance policy allows for waivers subrogation. Some do not and if your client or you have a policy that does not allow for waivers subrogation, and the lease agreements that are being used, waive it. You may find your client is without coverage at all and this is sensual acquiring the policy.

If you're entering into commercial leases using the basic AIA forms withdrawal could be done waiver subrogation language. To way to make
sure that the policy is endorsed to cover of the approved waivers. Some
even allow waiver after a lawsuit is filed, and can destroy insurer’s
subrogation case on the day of trial if they wish. So it's important to
understand all about the subrogation clauses and the obligations of the
insured with regard to subrogation since they must cooperate.

And finally of course, there's a lot bad faith. My home State of California
back in the 1950s decided that contract benefits simply weren't good
enough for people who incurred property claims. And so they created
what they called with toward of bad faith. And if an insurer acts in such a
way that was not fair and reasonable or failed to properly treat an insured
with good faith and fair dealing.

The insurer whose claim was wrongfully denied, could suite on the
contract and prove the breach of the insurance contract recover everything
promised under the policy. And then in addition, to the general contract
damages could also claim toward damages for trouble inconvenience
paying, suffering, loss of sleep, loss of business, loss of anything you
could think of. And if it was agree just enough could also seek punitive
and exemplary damages from the insurer.

And that has been going on though since 50s and has been adopted in
most states either by court decision or by bad faith type statutes. And so
this is always a weapon available to an insurer and its counselled when
there is some difficulty in claims negotiation to remind the insurer and the
insurer’s representatives of that the insurers considers that’s being treated
with less than the good faith and fair dealing required by the implied
covenant. And by the fair claims settlement practice statutes enacted in
the state. And that's how you negotiate property insurance claims where
there is a dispute over values.

And if for some reason the only dispute is how much, then the policy has
a provision called appraisal. That appraisal has nothing to do with how
much your ring is worth that you bought for your wife. Appraisal was an
arbitration type agreement and situation that is not only in the commercial
property policy, but it is in every standard fire policy.
And it is a form of arbitration where the insurer points an appraiser who is independent. The insurer points out appraiser is independent. They two choose it on fire. We will resolve any dispute in the signature of any two sets the amount of loss. They don't do anything about whether it's covered or not, it only sets the amount of value and loss.

And then McKenzie my soliloquy, I also have forms in the book, but if you have anything you think I've missed, ask me.

Mackenzie Coplen: Thank you so much, and I was actually going to ask free just to address to those forms. I think forms in book may extremely useful for attorneys who are going into new areas or trying to stay in areas. So do you mind if something a little bit about what you have in there?

Barry Zalma: We put in a form a proof of loss, which is the standard that is used by insurance companies, they will give you one. In fact most insurance companies are required to provide you with a blank form of proof of loss by statute or regulation. Well, you can see in what a proof of loss looks like in the form which is in the appendix. And it basically says you insured me this is the policy number, you insured against the risk of loss of my property. Remember policies do not insure property. They insure people against the risk of loss of property. It lists the names of the people insured when the loss happened? where it happened? Where they insured live? Where the property was? What the amount of insurance was? And then it explains what the amount of losses, what the value of the property is and the amount of claim. And it's sworn to undergrowth with warning on the form that if you lie on the form, you can go to jail for perjury and false swearing is a defense to any claim.

So if you likely or insurer on the proof of loss, they can deny the claim even if they lie, there is only to part of the claim. I attached in my appendix some non-waiver agreements, the kinds of things you may receive from an insurer who believes that there is a potential problem with coverage and non-waiver agreement or a non-waiver reservation of rights.
letter does not change anything. It just means that by investigating the insurer is not waiving any of its rights to deny a claim.

And usually nothing happens with regard to the non-waiver in the claims pay. I attached test to form of a letter of advising of right to appraisal and how the appraisal situates works. And then, I attached the California, Tampa and Houston of actual cash value, because I'm from California and actual cash value has a different definition in various states. Some policies actually define the term actual cash value, some do not.

In California for instance, if the policy doesn't define actual cash value, the courts make it mean the difference between the fair market value of the structure before the loss in the fair market value of the structure after the loss with the results of the subtraction being the amount of recovery or the proof of what actual cash value is.

Most people with any wisdom will not buy just an actual cash value policy, they will buy a full replacement cash policy because that replaces the property with new for all since you really can't rebuild the building with 30-year old lumber.

You're going to have to buy new lumber, new dry wall, new plaster and new roofing and everything will be new and the difference between the actual cash value and replacement value is an important fact.

Under the terms of a commercial property policy, you can collect actual cash value and start the reconstruction first with an agreement by the insurer to pay the difference between the actual cash value and replacement value.

Later after you've actually expended the money and then they will prove that you actually did the rebuilding and then pay you the difference. We included subrogation and salvage agreement and that's the last of the forms have included.
There are more forms available in book and e-book that I've created, that's available, as a Kindle book or as a paper bag that's in 10 volumes called Zalma on insurance claims which covers both commercial property and commercial liability coverages, regular liability coverages, auto coverages and everything. Then the property in casualty fee it's a much more expensive, use that's more appropriate for people who are actually dealing with insurance coverage issues on a daily basis. It's a 10 volumes, I think a lot there.

Mackenzie Coplen: Great. And you mentioned earlier you can find all of those on your website correct link so?

Barry Zalma: Correct. On my website is Zalma.com, I'm really originally I'd be pushed on to the website. There is a section called the Insurance Claims Library. And if you click on that, you will see every book writing that I've done. That includes three ABA books that ABA is published, four books from full court press which is a fastcase.com group, and then all my Kindle and then one book, Thomson Reuters published. And you couldn't find my daily blog which is free and my twice monthly fraud newsletter which is free because I'm not smart enough to charge for it.

Mackenzie Coplen: Great and then people can definitely go on your website and sign up and follow up that resources, and because we have so much experience in this area, what is a piece of advice that you would give attorneys looking to move into this area of law or interested in this area? What's something that you would advise them to be starting out?

Barry Zalma: We'll start again, they should at least read the insurance policy they booked. I know this is a strange thing. I've been doing insurance claims for 51 years and I ask everybody I need underwrote did you read and understand your insurance policy? So far, said they did. And both of them lie.

So, I don't think many people actually read insurance policies except people like me and for a lawyer to buy, for instance you know insurance
or an office package to protect his office materials did not read the policy should be ashamed. But we'll find it probably pretty normal.

But if you want to get into the field of dealing with insurance, you might want to read your policy and then calling your insurance agent or broker and say why didn't should put this is my policy? Why don't I have a waiver of subrogation agreement in this policy? Because my landlord forced me to waive subrogation in our lease. It's a simple thing.

And you might find that there are conditions that you can change and you must need very careful to answer all the questions on the application for insurance honestly, amazing how many times lawyers get into trouble. Because they don't spend a lot of time whether let's some undergoing and do the work and their insurance application contains a falsehood that the insurance company will find the material, then can resend the coverage.

So start with that, get the book I mean, it's fairly inexpensive. That will give you a basic grounding in it. If you want more detail, you can go into some of my more detailed books. But it's basic learning. And then, I would sit down with an insurance broker and I sit down with a risk manager, a person whose profession is to manage risks and discuss the insurance situation with them and how they deal with the insurance policies.

And you might contact the public insurance adjuster. They think they're the smartest barrier in the room. And will be just thrilled to make a relationship with the lawyer for no charge and explain what they do. And you'll find that some of them are very professional and some of them are not, so be careful with entering any kind of contract relationships with it.

But the key to understanding insurance and insurance claims is to read the insurance policy, friend of mine puts on a t-shirt that’s RTFP that I won’t repeat what it really means but it starts out with really reading the policy. I have, as an expert problem with insurance companies whose people don't read well policy. And because we are smarter than insurance adjusters
hopefully and we've been through our school and learned a lot about law and interpreting contracts.

It is very useful to you and to your clients who have a claim. To be able to explain to an insurance adjuster where they went wrong. Because we're human, they make mistakes. And it's much better to explain you made a mistake and you didn't read your policy correctly. Let's settle and settle the claim, then get into four five-year bad faith lawsuit where you may or may not get more than the contractor which is.

The job of a lawyer is not to litigate unless absolutely necessary. The only case that's ever resolved permanently is the one that's settled and then both parties are probably just a little bit upset with the other. But their results and they get the money in their hands and they don't have to wait and pay you fees or except a contingency fee which means if they pay your contingency fee and they get exactly what they're owed. Then they're not entitled or don't have enough money to rebuild their building.

And that's the problem with public adjusters and their contingency fees because if they're honest and appropriate, they get them everything that they're entitled to. And then, 10% goes off, the 10% has to come out of somebody's pocket. Well, if you're a busy professional, that's probably cheaper than giving up your time. Because we probably charge more per hour than the most adjusters too that become certain of it. This is what when I was adjuster I don't think well I remember exactly. I was paid 550 dollars a month.

And I don't know any lawyers they work for that. I got all the way up to a thousand dollars a month when I press the bar. But that was a few years ago and I make more than that. Anything else?

Mackenzie Coplen: Well, I'm going to open up. I'm going to let the operator to explain the Q&A process, real quick just to see if anybody has any questions and so I’ll turn it over to him momentarily and then, we can continue for a little bit longer.
Barry Zalma: Yes, I can still wish to tell all the old stories.

Mackenzie Coplen: Operator, you please explain that question & answer session for him.

Operator: Thank you ma'am. Ladies and gentlemen, if you would like to ask a question, you may do so by pressing star one on your touchtone telephone. Again that is star one on your touchtone telephone. We will pause for just a moment to compile the Q&A roster.

Again, if anyone would like to make a comment or question, press star one on your telephone keypad.

Mackenzie Coplen: Well, we're waiting to see if there's any other questions from the audience in here, I just want to remind everybody that they can either go to Barry’s website at Zalma.com and order the book, or you can always go to the American Bar website and order the book there as well. And the name of the book is a Commercial Property Insurance Policies Desk book. I just want to remind everyone that’s where you can find this book, that's a great start for you gaining knowledge in this area and to walk you through that process with forms attached which I always think is great. Every good lawyer has good form so.

Barry Zalma: I think everybody is shy. Well, these compiling up, I’ll tell a story about how a commercial property loss wouldn’t arrive, the insurer was a jeweler, he decided that he didn't have a very good Christmas season, and so he hired a neighbor to come to his business, wearing all black with a mask and fake a robbery. And that would go the video because insurance companies require jewelers to have all kinds of video surveillance before they issue a policy.

And then he reported stolen everything that he had in his inventory. What do you didn't tell the insurance company was that the perpetual inventory he maintaining was really not perpetual. He only added purchases and never deducted sales. So that 3 million dollars in inventory his record showed was really 300,000 dollars in jewelry inventory.
And he had all kinds of receipts that he had created. I had my investigator call all of the purchases of the jewelry that were eligibly sold by this individual and purchased. And he started breaking up marriages all over the San Fernando Valley. Because of course it's the wife will always answers in the phone.

And the adjuster would say, Mrs. Jones, I'd like you to confirm that your husband purchased a 5000-dollar diamond brooch from ABC jewelry and then there's a silence, the husband is called to the phone. What happened was that most of the purchases were taken out of the phonebook. Three of the people who allegedly purchased from the jeweler we're dead at the time of the purchase. One was a seminary student who would never earned 5000 dollars in his entire life. And we eventually were able to prove the fraud.

The only other kinds of frauds that are random or since the profit those are people who just don't know how to set a fire. And they tend to, use all kinds of strange things went to restaurant owner because we’re only have big fires in restaurants that are failing, used a 180 proof of our own has accelerated because of the lawn in the restaurant. We spread it up in the areas where an electrical fire might happen and to watch the building.

He would have succeeded but for the fact that when the fire department arrived all of the circuit breakers to the electrical service in the restaurant has been turned off. Because that was their normal closing procedure. And you can't have an electrical fire without electricity. And so is brilliant impossible to detect accelerated fire, with lost because he turned off the electrical power.

Now do you have any questions coming in or is everybody just shy?

Operator: Again that is star one on your touchtone telephone to ask a question.
Mackenzie Coplen: Thank you for sharing those two examples, that's very interesting. I don't have a lot of experience in the insurance world and so. I'm sure you get claims very interesting stories like that come along?

Barry Zalma: Yeah well just a few couple of them. Yeah, one took 15 years of my life, and another took 10, but even assumed he even threatened to kill me four times including in the court room and this first time I've ever been testifying in a trial where there were three bailers, who never took their hand off their weapons.

Mackenzie Coplen: Some exciting carrier for you?

Barry Zalma: Yeah, it's always exciting when the bailiff offers to walk you to your car.

Mackenzie Coplen: Yeah. Definitely, well, thank you again so much for joining us today and going over your books and all the things that contains and all of the information and we really value your participation. Again there's going to be a direct link for the recording of the Podcast, it'll be posted on our website at npr.org/podcast. And please save the date for our next podcast, scheduled on Wednesday May 15th and don't forget to go online and order the book. And thank you again. Barry, I was great having you on.

Barry Zalma: Thank you for letting me and would you email me the link because I am not in the position to write right now. Thank you very much for listening whoever listened and amazing how shy lawyers could be.

Mackenzie Coplen: It is well thanks again for joining us and well, I hope I’ll see you soon. Thank you.

Barry Zalma: Bye, bye.

Operator: This concludes this conference call. Thank you for your participation. You may now disconnect.