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Successful Claims Review; It's all about Preparation and Communication!

I. Commitment

A. The Players

The Client/Insured:

Typically, at least one member of the client's risk management and/or legal team. This/these representative(s) should be responsible for monitoring litigation. Additionally, this person should have the authority (or easily have the ability to obtain authority) to make business decisions on behalf of the client.

The Broker:

Coordinates and often administers the insurance program covering the claims. Liaison between all parties to help coordinate meetings, and coverage issues.

The Claims Adjuster:

This is the insurer's representative who oversees the litigation throughout the life of the case, sets reserves, and monitors on behalf of the insurance company. This person should also have authority (or easily have the ability to obtain authority) to approve the litigation plan including settlement strategy. It is important for a claims adjuster to have open dialog and communication with all parties. This will enable accuracy in reserving and the handling of litigation.

* If multiple insurance policies are triggered by the relevant litigation, a representative of each insurer should actively monitor the litigation and be a part of the claims review process. All adjusters in this capacity must be in communication in order to follow policy limits and guidelines. They also

must be in communication with counsel to ensure that the litigation process is moving and not stalled due to policy movement.

The Defense Counsel:

Typically, a team of attorneys that handle the day-to-day litigation. Depending upon the scale and complexity of the litigation, as well as the phase of the litigation, this team may grow (or shrink) in size. A member of the defense team (usually a partner) should be designated to represent the team when possible to limit defense costs.

B. Success as a Team

Teamwork is critical to having a successful claim review. The players all come together at the claim review with the goal of obtaining the most favorable outcome for the Client/Insured. The best teamwork occurs when the broker, claims adjuster (carrier) and defense counsel all work together like the spokes of a wheel (and the Client is the hub).

The claim review is the perfect opportunity to address any issues, such as conflicts that sometimes arise as a result of the Tri-Partite Relationship, and to ensure that all of the players are on the same page and understand why certain recommendations are being made for the benefit of the client. Everyone who participates in the claim review has a duty of care to the client/insured. As a result, everyone's goals typically can be aligned in order to provide the most effective defense of each matter as well as the group.

II. **Avoid Surprises!**

One of the main purposes of a having regular claim review meeting is to avoid surprises and ensure that all relevant parties are up-to-date on what is going on in a group of related litigation. Litigation is unpredictable. The discovery process can reveal changed circumstances and unknown facts. Plus, the law is constantly changing. These changes often impact how to best defend against certain types of claims and affect the sustainable and/or settlement value of a case.

Taking an active approach to reviewing claims ensures that a realistic case liability and value assessment is made through the life of a case. Strategy can be developed (and re-development) timely and thoughtfully as developments occur. Additionally, these are key opportunities to ensure that everyone understands what is going on and what steps need to be taken to continue to prepare a defense and avoid the stress associated with a "fire drill" (i.e. rushing to prepare witnesses and evidence for a trial, mediation or another critical event in litigation).

These relevant changes can easily be overlooked or missed completely when a passive approach to the litigation is taken. Being underprepared risks unexpected jury verdicts in excess of the amount ever contemplated and can lead “fire drills” to prepare for unexpected and critical deadlines approach.

III. Legal Defense - Steps to Take in Advance of a Claim Review.

A. The Claim Review Sheet

The content of these sheets should be developed based upon the client and carrier’s particular needs. However, the goal is always the same: to provide a brief overview of claims and defenses in the case, the litigation activity that has recently occurred, and to recommend a strategy for the case going forward.

These review sheets should be organized and easy to review, so they serve as a quick reference during the Claim Review meeting. If organized properly, the claims review sheet should look like an appellate argument road map. It will guide the meeting and ensure all relevant updates are efficiently addressed.

B. Communication

a. Defense Team Members

The defense team (often a partner and associate) assigned to a matter should prepare the claims review sheets. The attorney who handles the day-to-day on the file (this is often the associate but can vary based upon the complexity of the file) should prepare the initial draft. However, before it is finalized, the entire team should confer to make sure all relevant updates are addresses and that the entire team agrees on the liability/damages analysis and recommended next steps addressed in the sheet.

b. Defense Counsel and Claims Adjuster

In many cases, a member of the defense team should also coordinate and discuss relevant updates when the claim review sheet is prepared. The claims adjuster should not be surprised by anything in the claims review sheet. Additionally, as discussed below, the claims adjuster is often privy to information obtained from the workers’ compensation adjuster that could affect the damages analysis and evaluation.

C. Coordination with Workers' Compensation

This also is a key time to reach out to the workers' compensation ("WC") team to obtain relevant updates and to provide information that has been obtained in the GL case that may be relevant to the parallel WC claim(s). Coordinating with WC counsel and/or the WC adjuster can make or break a case:

Example 1: Plaintiff testified in the civil case and admitted he sustained lower back injury prior to the date of loss. Meanwhile, Plaintiff denied having sustained a pre-date of loss back injury to his WC doctors. Critically, he was seeking authorization from the WC board for lumbar spine surgery.

Defense counsel notified the WC team, and the WC defense counsel utilized this conflicting testimony to successfully bring a claim for fraud against Plaintiff. All indemnity payments to Plaintiff were cut off as a result.

The fraud finding became equally relevant to Plaintiff's credibility in his GL case.

Example 2: A plaintiff admittedly was involved in two work-place accidents. He commenced a lawsuit in connection with the second accident and reported a version of events that conflicted with the initial investigation (and defense witness' statement). Plaintiff's version of events would give rise statutory liability; the defense witness' statement would not.

In response to defense counsel's demand, the plaintiff's counsel provided authorizations to obtain medical records from 4 providers. This update was relayed to WC defense counsel. WC defense responded that plaintiff had treated with far more than 4 providers, and that he had treated with these providers prior to the date of loss.

Defense counsel followed up was able to obtain these additional provider records. Notably, Plaintiff reported to these providers a version of his accident that is consistent with the initial investigation and defense witness' statement; i.e. a version of events that does not give rise to liability. These records could be construed as party statements admissible for

the truth of the matter asserted. Alternately, at the very least, the give rise to serious credibility issues for the Plaintiff.

However, the timing and scope of disclosures between the WC and GL sides must be considered. For example, information related to Plaintiff's medical health and care should not be disclosed until a HIPAA authorization has been supplied to defense counsel for these materials.

IV. Legal Defense - Steps to take Post Claim Review.

A. Communication

The Defense team should have a debriefing after claims reviews to ensure that everyone is aware of what was discussed and what was agreed to with regards to the defense strategy going forward.

B. Legal/Investigative Activity

Often, additional investigation, legal research and/or other activity is approved at the claims review meeting. This activity should be acted upon, and Defense counsel should provide status updates to the claim's adjuster on all progress.