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We Have a New Claim Where? Best Practices for Handling Regional and National Accounts

Ideally, claims and coverage issues across all jurisdictions should be handled smoothly at the same high level of competency that you expect at the local level. In practice, it is often difficult to obtain predictable, consistent, high level claims handling with different players, competing interests, and different substantive and procedural rules.

This session will discuss the concerns, problems, goals and solutions in handling claims across different geographic areas, from the perspectives of construction clients, a construction insurance broker, a claims profession, and a New York-based construction lawyer, all whom have significant regional and national practices. The discussion will include what can be done to offer the best service to clients and to cut through disputes quickly and creatively. The session will also address the critical importance of getting the best personnel in place locally, including attorneys, investigators and experts; and the benefits of maintaining uniformity of standards, training, reporting, billing and case tracking. Additionally, this session will include discussion on “special account instructions”, the importance of early tenders and notification to all carriers. We will identify the sometimes differing interests between Client, Broker, Carrier and Counsel and how communication, teamwork, and trust are essential in resolving these differences, and that the resulting relationships are critical to long term success.

I. Claims Handling at the Local level vs. National level

When handling claims at a national level, it is inevitable that more parties will be involved. In order to competently and effectively handle claims on a national level, it is essential to have a solid understanding of all key decision makers and what jurisdictions each player is sitting in. This means knowing your client and what the client’s priorities are – not only in relation to loss response but additionally what the client’s overall business goals are. Claim resolution should be consistent with the client’s overall business goals. For example, carrier reserving philosophy may differ greatly.

Logistically, handling claims on a national level requires careful attention to client dynamics and knowing where major players are geographically, including what time zone they are in. Personnel changes undoubtedly will occur more on a national level, requiring frequent “checking in” as well as clear protocols for after personnel changes occur. Expressing clear expectations in this regard will help ensure all parties are on the same page throughout the course of the relationship.

In addition to understanding a client's loss response, business goals and reserve philosophy, consideration of client dynamics includes attention to special account instructions. Generally, deference to insured's preferences diminishes the more money the carrier is contributing and the less SIR money is involved. However, behind any individual claim is the bigger customer relationship and the need to manage client expectations. A recurring issue is also whether excess layers will follow the special account instructions, which should be established clearly from the beginning.

Another significant difference between handling claims at a local level and a national level are the rules of the venue itself. In national claims handling, it is possible the insured will not have familiarity with the venue, in which case the client will rely more heavily on the attorney or firm. Of course, national claims handling also requires the attorney or firm to have a solid understanding of the procedural rules for the venue where a claim is being handled, requiring the attorney(s) to be knowledgeable in a variety of venues where the client operates. Also, a regional office may not be used to handling law suits, requiring additional instructions or education on how to proceed.

II. Common Difficulties at a National Level

The tripartite relationship between the insurer, its insured and the insured's counsel is a mutually beneficial one. The interests of the insured and insurer are typically aligned – to resolve the claim as quickly as possible, for the least possible amount of money. However, there are times when conflicts arise.

The role of the broker can be to literally broker differences as they arise between parties, often very real disagreements regarding the valuation of a claim and even the strategy of handling a claim. Claims handling is an art, not a science and behind each claim, there is often a multi-million dollar relationship. Cultivating these relationships is largely a job for the broker.

Disagreements may also arise where attorneys defer to the insurance company, without input from the insured. This often occurs when the relationship between the attorney(s) and the insured is a new one, where the attorney(s) are more familiar with the carrier and the carrier's preferences. However, this can be quite problematic, specifically when there is a large SIR or deductible.

In addition to considering the input and preferences of the insured, the insured should be kept informed throughout the handling of a claim. Keeping all parties informed about important dates, trial updates, settlement discussions, or other important events ensures that everyone will be on the same page, stay involved and have the opportunity to communicate their ideas or feedback. The largest mistake attorneys can make is failing to keep all parties informed. Conversely, a big mistake often made by insurers is to settle without discussion. Communication among all parties is key.

III. Best Practices for Handling Claims at a National Level

The mistakes and difficulties mentioned above can easily be avoided. Clear initial planning is the cornerstone of effectively handling claims at a national level. By setting forth all required protocols and making the insured's expectations clear from the start, many problems can be avoided throughout the course of the claim. This is especially important when there is no prior relationship. This also ensures that the issues of primary concern to the insured are identified up front and gives the attorney the ability to focus on those issues.

Another way to excel at handling claims on a national level is maintaining a firm understanding of coverage issues. The prime directive for counsel is to maximize coverage for the insured. Although the common practice is often to avoid coverage issues in handling the defense of a claim, counsel should address the impact of coverage issues, rather than avoid them. Common coverage issues include horizontal exhaustion, exchange of insurance information, noticing all layers of excess and all potential lines of coverage, and local remedies for breach of contract to purchase insurance. Counsel should be knowledgeable about the common coverage issues in the jurisdictions where its clients operate. At times, counsel can use these issues as leverage to engage insurers who are unwilling to participate in mediations or negotiations.

Consistency also plays a major role in successful claims handling at a national level. In addition to consistently outlining rules and defining expectations as previously discussed, handling claims at a national level requires that legal arguments are consistent across multiple jurisdictions. For example, if an attorney is handling asbestos matters for a client in both New York and California, he or she will want to be careful not to admit something in California that is detrimental to their case in New York, based on different laws or legal requirements. Understanding that legal arguments affect the client differently in different jurisdictions is vital.

Another illustration of the need for consistency across jurisdictions is tendering strategy. When creating an indemnity clause, attention must be paid to maximize indemnity in all states where the insured operates. This requires knowledge of whether a negligence-based indemnity standard is sufficient, or whether “arising out of” language is necessary.