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Effectively Defending Against "Bad Faith" Tactics Aggressively Employed By Plaintiffs' Attorneys

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I. The Importance Of Gathering All Relevant Information Once The Carrier Is Aware Of A Claim

The moment the Carrier is made aware of a claim, an immediate investigation will enhance the Carrier's ability to defend against an unreasonable policy limit demand. Plaintiffs' attorneys have much more access to relevant information and will significantly restrict Carrier's access to this information to the greatest extent possible. By doing so, Plaintiffs' attorneys try to leverage the Carrier's limited access to information in the beginning of a claim with unreasonable deadlines to respond.

II. Common Methods Plaintiffs' Attorney Employ To Use The Threat Of Bad Faith Litigation To Extort Higher Settlements

Though a Carrier has a duty to place its insured's interests above its own, the national trend around the county is to limit the insurer's right to conduct an investigation to determine if the insured is realistically subject to any exposure. As a result, the Carrier will receive a policy limit demand with a short time to reply. If the Carrier has not had a chance to examine pertinent information, the Carrier can find itself in a tenuous position because if it does not respond within the proscribed timeframe, Plaintiffs' attorneys will threaten to recover from the insured personally if the demand is not met. In order to counter the argument that the Carrier does not have enough information to review the claim, the Plaintiffs' attorneys may "hand-pick" certain records and bills that are most favorable to the Plaintiff and forward those to the Carrier so the Carrier has "enough information" to assess the exposure of the insured. The short time for a response can prevent the Carrier from determining whether the claimant has pre-existing conditions; fully exploring the Plaintiffs' claim history and criminal record; and other relevant factors in evaluating the claim. Lastly, some states allow the Plaintiffs' attorneys to negotiate directly with the insured and enter into a "sweetheart judgment" that the attorney agrees to only collect against the Carrier. These Consent Judgments will often contain a "Finding of Facts" section that makes it extremely hard for the Carrier to assert otherwise valid defenses.

III. What Does The Carrier Expect To Hear From Its Attorney To Evaluate A Claim That Could Have Bad Faith Implications

It is absolutely vital that the Carrier receive clear analysis from its attorney in order to evaluate a claim in its earliest stages and avoid potential traps by Plaintiffs' attorneys. If the defense attorney or the Carrier gets fixated on the issue of liability only, and does not recognize the potential damages associated with the claim, or vice versa, the consequences could be severe. The Carrier must expect a detailed analysis on both items along with the potential outcomes if the claim is to be defended. It is often helpful for the Carrier to set out its procedural parameters for what is involved if policy limits are demanded or bad faith litigation is threatened, but it is the defense attorney's responsibility to provide the information sought in a clear, concise manner.

When the attorney begins communicating with the carrier, it is always wise to pick up the phone and have a conversation. In every bad faith case, Exhibit A will be the claims specialist's file that often contain e-mails, which at the time, might seem innocuous, but can become the backdrop for a large damages award against the Carrier. It is also important for the claims specialist to communicate to the defense attorney why each decision was made at the time it was made, what were the mitigating factors and why the claims specialist decided on a particular course of action.