



2015 CLM Annual Conference
Palm Desert

DEALING WITH DEFENSE COUNSEL – MECHANISMS TO IMPROVE THAT IMPORTANT RELATIONSHIP

Presenters: Mercedes Colwin, *Gordon & Rees LLP*
Ron Goldstein, *Aon*
Aisling Jumper, *York*
Luigi Spadafora, *Winget, Spadafora & Schwartzberg, LLP*

This program will review and discuss best practices in dealing with outside defense counsel including: the carrier's perspective and the law firm's perspective on what works best and what does not. We will then move on to the appointment of panel counsel, coverage counsel and mechanisms to improve the process. The panel will discuss how counsel is appointed and how carriers develop and maintain their panel counsel lists. A significant portion of the presentation will include detailed discussions/debate on mechanisms to improve relationships by better budgeting, application of litigation management guidelines, billing formats and various mechanisms of auditing with a focus on protecting the attorney/client privilege. We will also discuss alternative fee arrangements and how these have worked well to control litigation costs and ensure long term partnering between the carrier and defense counsel. We will attack difficult issues such as: who controls the defense; conflict issues; the tripartite relationship and mechanisms to avoid bad faith allegations.

Presenters:
Ron Goldstein, Aon
Aisling Jumper, York Pro
Mercedes Colwin, Gordon & Rees
Luigi Spadafora, Winget, Spadafora & Schwartzberg, LLP

Target audience: Professional Lines Claims Professionals, Defense Counsel and Coverage Counsel; Adjusters, Claims and Risk Managers with at least 5 years' experience.

I. The Carrier's Perspective & Execration

One of the most important aspects of the carrier/defense counsel relationship, is understanding the carrier's needs and requirements. These needs and expectations can be best characterized by the phrase "no surprises." Carriers expect defense counsel to expeditiously analyze and evaluate a given claim, and to properly forecast expected costs and anticipated exposures, with the ultimate goal of resolving the claim.

What do carriers expect and what should defense counsel do to meet those expectations?

- a. Aggressive Defense**
- b. Cost Effective**
- c. Communication Flow**
- d. Strategy**
- e. Resolution**

II. The Broker's Involvement

When do brokers become involved in the process and what are their expectations from both the carrier and defense counsel?

- a. Collaboration**
- b. Communication Flow**
- c. Managing relationships**

III. Duty to Defend vs. Duty to Indemnify

Why is this distinction important for both the carrier and defense counsel?

- a. Consent to Counsel**
- b. Right and duty to appoint counsel**
 - i. The 'Panel' Concept**
- c. Controlling the defense**
 - i. Who calls the shots**
 - ii.**

IV. Defending the Case

What is expected of defense counsel for initial case intake through resolution of the claim? The carrier and defense counsel's perspectives on handling a claim, and the dynamic of communication.

- a. Initial intake**
- b. Analysis**
- c. Experts**
- d. Strategy**
- e. Valuation**
- f. Resolution**

V. Litigation Management Guidelines

Are these really required? You'd be surprised. Again, remember the mantra – “no surprises.”

- a. What are they**
- b. Commonalities in most guidelines**
- c. Practical application on mastering the guidelines**
 - i. Staffing**
 - ii. Attendance**
 - iii. Motions**

VI. Budget

We will discuss the budgeting process and how it is part of the collaborative process between defense counsel and carrier.

- a. Process**
- b. Differences**
- c. ABA compliant**

VII. Avoiding Bad Faith Allegations

Does defense counsel have a role in this process? What is expected and what should be avoided.

- a. Coverage discussions**
- b. Clear understanding of duties**
- c. Client controls**
- d. Conflicts**

VIII. It's all about Partnering

We will discuss the factors driving the defense counsel/carrier relationship, and how to maintain a harmonious and effective relationship.

- a. Drive Relationships**
- b. Update expectations**
- c. Regular Feedback**
- d. Train each other**

IX. Questions and Answers

