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## **It's a Juggling Act: Tips for Dealing with Case Management Pressures**

### **I. Claims Managers Have Many Competing Concerns**

From educator to mediator to project manager to negotiator, case managers wear a lot of hats. They are tasked with coordinating all aspects of an injured worker's care to get them back to health, work and productivity. In some cases, they are the day-to-day contact for workers, educating them on the claims process and handling all the paperwork. Case managers communicate with the client, doctors, nurses, adjusters, and lawyers to ensure everyone in the process is updated and on task. They face pressure from their employer to control costs, comply with internal guidelines and external regulations, keep claims out of court, and meet quality standards from internal and external audits. These demands impact every file, which can number from 150 to 300 claims.

#### **A. Customer service (to the Insured/Employee, and, for a TPA, the client)**

Basic tenants of customer service that apply to many industries apply in the claims handling arena. These tenants include response time, courtesy, and professionalism. The ability to deal with people that are not necessarily in the best frame of mind or physical, emotional, or financial health in a way that addresses their concerns while remaining cognizant of policy provisions, payment restrictions, and other issues pertinent to the insurer is a key component of good customer service.

Industry specific customer service aspects include the timing and tone of how information is conveyed from the carrier to the insured, or the injured employee of an insured, or from the TPA to the insurance company. Included under the umbrella of customer service are response time in acknowledging the claim and information needed from the insured, employee, or insurance company to process the claim and keep it moving toward resolution.

Additionally, most states have statutes that govern claims handling and settlement procedures. For example, the Model Unfair Claims Settlement Practices Act ("UCSPA") was drafted by the National Association of Insurance Commissioners to establish standards for investigation and disposition of claims under policies or certificates of insurance issued to residents of states that adopt the model act. Model Unfair Claim Settlement Practices Act, Section 1 (1997). Most states have adopted a version of the model act.<sup>1</sup> A violation of the UCSPA can provide the basis for a bad faith claim against an insurer.

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<sup>1</sup> Florida's UCSPA is codified at Fla. Stat. Section 626.9541. California's UCSPA is codified in the California Insurance Code, Section 790.03. Texas's UCSPA is codified at Tex. Ins. Code Section 541.060.

Further, every state has a code of ethics applicable to claims adjusters, and many are based on Florida's model, which is contained in Florida Administrative Code Section 69B-220.201, Ethical Requirements for All Adjusters and Public Adjuster Apprentices ("Requirements"). The Requirements consist of standards of conduct that define ethical behavior, and are binding on all adjusters. The Requirements list twelve (12) standards applicable to claims handling and investigation and settlement. Fla. Admin. Code R. 69B-220.201(3)(a)-(l). Case managers need to make sure their adjusters are aware of these requirements to ensure not only good basic customer service, but also good legal compliance.

**B. Claims handling ties into customer service as a brand platform and marketing tool**

Branding and marketing are always important in the insurance industry based on its competitive nature. This is true especially in personal lines, where companies are associated with slogans and other marketing materials that convey a message that the insured is "in good hands" or that the carrier is on the customer's side, et cetera. While commercial procurement is typically more sophisticated than personal lines, maintaining claims handling policies and procedures that are consistent with the company's brand is nevertheless still important. Communication of the branding message through the claims process impacts perception of the product. When the customer is happy with the claims process, they may be less inclined to change carriers at renewal time. Also, because loss run history impacts future premiums, how the company maintains efficiencies in the claim handling process is an important consideration to the employer/commercial buyer of insurance.

**C. Curtailing costs while maintaining high customer service and satisfaction**

In certain types of claims environments, claim related costs drive the case. For example, in workers' compensation claims involve payment for medical treatment and lost wages. Getting workers back to work is a big concern for most claims professionals in this field. Avoiding unnecessary medical treatment is another area of concern. While most states have a statutory workers' compensation system in place, states vary as to the procedural methods available for resolving issues related to medical care (selection of physicians and pharmacies), obtaining a second opinion, and determinations related to the employee's reaching maximum medical improvement. See, e.g., Fla. Stat. § 440.13(2) (selection of initial treating physician by employer) and Fla. Stat. § 440.12(3)(j) (employee selection of pharmacy); O.C.G.A. §34-9-201 (providing that employer maintains panel of at least six physicians with employer selecting from panel but allowing employee to change from physician selected by employer to another physician on the panel).

In the field of property claims, particularly those claims involving catastrophic loss or a loss that displaces the property owner, repair costs and additional/alternative living expenses are major issues that drive the claim. Maintaining good lines of communication between the claimant and the vendors involved with the repair process is critical to keeping costs down and making sure that the claimant is informed of what to expect throughout the claims process.

**D. Internal and External Audits and Compliance issues**

Legal bill and claims processing audits can be helpful in spotting trends in terms of billing discrepancies. Spotting issues early and communicating with outside counsel and the claims handling team is beneficial in maintaining accurate reserve levels. Additionally, audits can be helpful in identifying

issues with claims handling procedures that may impact resolution rates. Further, periodic audits are helpful in identifying areas that can be improved upon to minimize risk of violation of claims handling guidelines.

## **II. Claims Managers Must be Informed on Valuation/Exposure**

### **A. Timing - Reserves and Indemnity**

Reserves for defense costs (if applicable), expert fees, and indemnity need to be established as soon as possible and monitored on a regular basis for the purpose of maintaining case budgets. If it is not possible to analyze potential exposure necessary to establish reserves within 30 to 90 days of file opening, the adjuster and/or outside counsel should be expected to provide information on issues impacting timing and establishing accurate reserves. Complex cases with multiple parties and indemnity issues, and time on risk issues may impact reserves for both defense and indemnity. These factors need to be identified and marshalled at the onset of a claim to avoid problems going forward.

### **B. Reserving and Impact on Insureds**

Reserves have an impact on insureds in terms of loss run ratings and, in the workers' compensation arena, the employer's experience rating. More specifically, reserves booked at the end of the year impact the experience rating used to determine the premium for the upcoming year's renewal.

Reserves are also a consideration in claims against insureds with large deductibles. Most companies allocate accruals for reserves in arrears, and the time frame for accruals for certain items is spread over a foreseeable time frame. For example, while a legal budget may be for a period of more than a year, allocations to reserves occur in smaller chunks, e.g., 3 months, rather than allocating for the entire expected life of the litigation. Spreading the allocation impacts budget forecasts for individual insureds in terms of budgeting for payment of the deductible. Additionally, for publicly traded insured companies subject to financial reporting, reserves for losses anticipated above a certain threshold must be reported, along with additional information on the claim itself. The purpose of such reporting is related to accounting issues and potential impact on the company's financial statements.

### **C. Overcoming Challenges with Respect to Reserving/Authority**

Challenges abound in setting reserves and obtaining settlement authority. These challenges include the ability to forecast liability/indemnity exposure, defense spend, and contribution. All of these factors can become more difficult with increasing complexity of legal issues, the number of parties involved, the type of damages claimed, the venue (judge and jury), and characteristics of opposing counsel. Good communication with members of the claim team, the insured, defense counsel, and other third parties involved in the claim is critical to meeting such challenges. Regular reporting is critical in maintaining accurate defense and indemnity reserves.

#### **1. Work closely with the adjuster/counsel to brainstorm ideas as to how to get a better sense of valuation.**

Strategies for working through the inherent challenges in reserving include strategizing with the adjuster, insured, and counsel on key facts impacting liability and indemnity issues. Developing early strategies on discovery and motion practice can also impact and minimize unnecessary work. However, the value of early dispositive motion practice should not be underrated, particularly if the issue involves

a matter of law. Early disposition of legal issues in a complex case can streamline discovery going forward. Additionally, early determinations on key legal issues can impact case valuation and potentially improve the chances at early resolution in certain cases.

**2. Work with inside and outside counsel to keep on top of issues that impact reserves and exposure.**

Even in the most well-planned cases, issues can arise that have the potential to impact valuation following the initial reserving process. In injury cases, for example, the extent of the injury and future treatment may change from a good prognosis to a poor prognosis based on how the injured party responds to treatment and/or if the party suffers unexpected complications from treatment. Admissions by parties in deposition that impact liability are also examples of an event that impacts reserves and exposure. Rulings on key motions, appellate court rulings, or rule changes that occur during ongoing litigation can impact strategy, exposure, and defense costs. See, e.g., *In re Amendments to the Florida Evidence Code*, No. SC19-107, May 23, 2019 (adopting *Daubert* standard and ruling, effective immediately, that *Daubert* is the governing standard in Florida for admissibility of expert testimony). The evidentiary code amendment came only seven months after the court's ruling in *DeLisle v. Crane Co.*, 258 So. 3d 1219 (Fla. 2018), striking the Florida legislature's adoption of the *Daubert* standard and holding that *Frye* would be the appropriate standard to determine the admissibility of expert testimony in Florida courts. Obviously a change to evidentiary standards impacts not only one claim, but an entire book of claims that may have similar issues.

Other major developments in a case, such as a change of judge, trial settings, and discovery orders can impact valuation. Intermediate reporting of issues impacting a case is critical to keeping track of reserves for indemnity and defense costs. In cases involving risk transfer, regular follow up is required for tender acceptance and allocation.

**3. Work with team to develop ways to reduce risk exposure/budgets.**

In addition to the strategies mentioned above, in cases involving medical payments, ALE payments, property damages, and retraining/rehabilitation, the claims professional should be cognizant of factors influencing individual values and stay informed as to developing trends that can improve results while minimizing costs. Working with other carriers that may be involved in a particular claim can be helpful in reducing expert fees and discovery costs.

**III. Trends across lines of business**

**A. New technology: Insurtech, increased digitization.** Insurtech emerged in 2010.<sup>2</sup> The global Insurtech market has been predicted to grow annually at a rate of 41% between 2019 and 2023. *Id.* This market is has been predicted to change the insurance industry through the use of artificial intelligence and other innovations in technology to generate, among other things, specialty policies that are tailored to specific types of risks, while decreasing premiums. *Id.* Startup companies in Insurtech face regulatory hurdles, as well as some resistance to change. *Id.*

**B. Data analytics and risk management.** Data analytics is helpful in spotting trends in claims activity, fraud, and within certain demographic areas that is helpful in underwriting and claims

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<sup>2</sup> <https://www.investopedia.com/terms/i/insurtech.asp>

management.<sup>3</sup> The ability to process large amounts of data is becoming increasingly important in terms of reducing claims handling response times. With increased use of IoT (internet of things) devices, data can be obtained related to individual driving habits, to home security, to city traffic data. While useful in providing predictive data, increased use of such devices also increases the risk of cyber incidents.

**C. Cyber threats.** Cyber criminals are becoming more sophisticated and creative. The typical targets of big retail, financial, and medical providers still exist; however, cyber crime is becoming more pervasive in other industries, including legal, construction, and insurance. Carriers and insureds need to be aware of these risks and have plans in place to reduce risk and losses associated with cyber crime.

**D. More frequent/severe natural disasters/climate change.** Climate change/global warming has been linked to increased occurrences of severe weather events, which include hurricanes and other types devastating storms, and increased flooding associated with rising sea levels. Additionally, increased lightning strikes are predicted based on increased participation and temperature changes. Weather events impact property and casualty claims, and the sustainability of the insurance industry. Increased risk-management focus is on preparedness, mitigation, and building code enforcement and location selection issues, which can impact premiums, deductibles, and coverage related to storm-related losses.

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<sup>3</sup> <https://www.smartdatacollective.com/how-data-analytics-is-changing-insurance-industry/>