Chapter 10 Claims Management

Habits for Responsible Claim Management
Proper claims management is a key factor in reducing insurance business costs. Giving claims their due diligence reduces fraud, keeps claimants satisfied (which reduces court costs), and helps defend the insurer against the court cases that do arise (which reduces settlement amounts).

- Don't be a hero. This advice relates to the futile attempt on the part of a claims adjuster or claims counsel to attempt to economize on a case where the gravity of the injuries and damages of the claimant are so severe in relation to policy limits that it is an obviously futile exercise to attempt to "save" part of those policy limits. It also applies where a company has given authorization for settlement up to a certain amount, and the adjuster or defense counsel unwisely attempts to save a few dollars from the amount authorized when the authorized amount appears to be an appropriate settlement.

- Listen to the advice of defense counsel. The danger is particularly severe, since the claims files on bad faith matters are subject to discovery by the plaintiff's attorney. Thus, if the claims file is replete with letters saying, "This is a bad one," "You better look out," "Pay this," and "This one could go over the policy," an insurer's failure to heed such warnings could result in a powerful claim of bad faith.

- Keep the insured client advised. Relating to the Second Commandment, if claims personnel have received advice regarding the possible outcome or the amount of liability involved, there is an absolute legal obligation to inform the insured. Ad damum excess letter, sent by the insurance company, advise the insured that there is a good possibility that the claim of the plaintiff and a subsequent judgment may exceed the policy limits. It is also safe to say that the insurer is obligated to respond accurately to requests from its insured with reference to the progress of any settlement negotiation.

- Do not deplete the policy carelessly when there are multiple claims. When an insurer is confronted with multiple claims and is concerned that the policy limits will be inadequate to cover all of the claims, the law usually allows interpleader. When several claimants claim the same fund, and the insurer is uncertain which of the claimants has a right to the fund, the insurer runs the risk that, if some claimants are paid and others are not, it may subsequently incur bad faith liability. Thus, the insurer may file an "interpleader" suit, which requires the claimants to litigate their right to the fund in question. Remember, however, in matters involving insureds, there is always the duty to defend an insured, and an insurer cannot dismiss itself from the claims situation by use of the interpleader device.

- Investigate properly. Since bad faith law may evolve toward imposing liability upon insurers for ordinary negligence, it is clear that the failure to do a good job in investigating the insured's liability obviously exposes an insurer to liability for ordinary negligence.

- Explore the possibility of settlement. At one time an insurer could sit back, relax and have no duty to initiate settlement discussion. Prior to modern discovery rules, the plaintiff's attorney usually did not know the policy limits, and it was a cardinal rule that insurers did not volunteer this information in most cases. Consequently, the plaintiff's counsel usually had insufficient information upon which to base a settlement demand.

- Think bad faith. The possibility of a bad faith action must be considered in all cases. However, it is particularly important in cases where there is a policy with inadequate limits. Demonstrating diligence during the investigation and intelligence during the settlement can insulate against bad faith accusations and help bolster a trial defense. Communication is also key. The adjuster must keep the claimant informed and respond immediately to communications by the claimant and his or her attorney

- Consider a client's demands and not take all eternity. Waiting for settlements of cases until "reaching the courthouse steps" is no longer advisable. A number of court decisions have expressed impatience at such dilatory tactics, ruling that an insurer violates its fiduciary responsibility in attempting to resolve the case in a timelier manner.

- Don't induce the insured to contribute. Years ago, some insurance companies would seek a contribution from the insured before the insurer would deplete its policy. This is clearly not tolerated today, and courts have ruled that exhorting the insured to contribute something was in itself "suggestive of bad faith."

- Consider the insured's interest. This is the greatest of the commandments since it embraces all of the others. "The law imposes upon the insurer the obligation of good faith— basically the duty to consider, in good faith, the insured's interests as well as its own when making decisions as to settlements."

Managing Claims Better with Technology

Cost reduction through automation

The ability to automate, increase productivity, and improve workflow management in claim processing represents a major opportunity to reduce costs. Companies who work to automate processes and tasks traditionally performed by skilled labor will set new productivity standards that competitors will need to adopt to remain in the market.

Improvement in insurer "legacy" computers

The industry is woefully behind the rest of the business community with aging hardware. Most systems are easily a decade old and replacement is too big an expense at this time. Enhanced components will help automate claim management decisions and workflow tools resulting in reduced cycle time and better claim decisions. For the aging and overworked adjuster population such programs could be incredibly helpful.

Electronic and web claims processing

While the paperless claim is not quite here, a growing number of them are being processed electronically over the Internet with great results in efficiency. This is reducing the processing cycle from days and weeks to hours and minutes. This is more important in cases where large case exposure or large sums of money are involved. The same electronic processing may also reduce the prospect of multiple submissions where claims involving fraud are copied from one jurisdiction to another or where requested coverage is made for insured property that doesn't even exist or it is allegedly stolen.

Managing Claims Better with Information Collection

Identification of exceptional claims

Companies are under more pressure than ever to be more efficient in identifying "exceptional claims" that can be managed better by a skilled adjuster. Finding these claims early so they can be appropriately managed will help prevent losses and identify additional coverages. Examples might include claims with a high probability for subrogation, those need specific reserve limits as well as the ones that represent potential large losses or litigation that can be mitigated early on.

Detection of economic induced fraud

When the economy is out of sorts, a growing number of out-of-work people turn to opportunistic fraud to replace lost wages. Scams include phony workers' comp claims, auto accidents and staged personal property burglaries. Business are also part of the mix where losses are orchestrated to create insurance windfalls. Uncovering the trends and indicators for this fraud is no small task. Central databases are essential, yet privacy issues create specific and limiting obstacles.

Clients need for privacy is a priority
Privacy issues and potential invasion suits create a high level need to develop security and systems measures to protect personal and financial data collected in the claims process. This is especially acute when one considers that the sharing of claims information is important to the claims management.

Claim Response
Many times, a claim that ends up in appraisal or litigation is found to have the root of its problems traced to the early stages of the claim. In fact, many claim experts feel that the first 48 hours following a loss are unique. This is the time when losses can be minimized and excess claims and client dissatisfaction avoided.

One of the key elements in the early phases of a claim is preserving the evidence. Since recovery by subrogation is the standard in many cases, the carrier's success is dependent on his ability to pinpoint a defective product or negligent action to demonstrate its connection to the loss. Evidence that "clears the air" in a disagreement is also essential. However, in the chaos of a loss site, it is all too easy for well-intentioned individuals to compromise or destroy evidence that would have made the recovery possible.

Documenting the loss site in the earliest cycle of the loss is essential. For instance, the claim of heavy smoke damage was disputed by an adjuster who visited the scene. Unfortunately, since he did not document what he saw with photographs, his testimony at arbitration was discounted. Other times, an early photograph revealed that lost inventory claims were only a fraction of that shown.

The reduction of further building damage is another reason to proceed quickly after a loss. Activities like weather protection, restoration of heating and cooling, removing water and saturated materials, protecting floors and rapid drying as soon as possible can eliminate costly replacement later. Adequate shoring and bracing can save masonry walls from collapse and aggressive drying can save floors and electrical systems that would otherwise be lost. Site security may also be an issue. When alarm systems have been disabled by damage or loss of power, restoring them to service should be a high priority. Chemical and biological hazards pose an equal threat.

Minimizing personal property loss is yet another motivation to act early in the loss cycle. Retrieving or protecting data processing equipment, which can be the lifeblood of a business, should be a high priority. Exposure to a smoke-filled building, for instance, can generate corrosion in electronic circuits and chips in as little as 36 hours. The process is accelerated when the high humidity of fire hoses is added to the mix. What can be done? Special services are available to retrieve data, tent equipment, dehumidify rooms, "scrub the air" and equipment cleaning on short notice.

In the same vein, some companies have major investments in equipment like printing presses, office machines, processing equipment, milling machines and other high-tech production devices. They are all vulnerable to exposure to moisture, smoke, corrosion and mold. Packaged inventories are similarly affected. Airborne moisture can penetrate wrapping and cardboard storage boxes causing penetration, bowing, collapse, and mold growth. However, aggressive treatment in the first 48 hours can avoid costly replacement.

Adequate working environments after a loss are yet another goal to achieve as early as possible. Emergency cleaning and deodorizing of offices, furnishings and equipment can help minimize loss of revenue and jobs.

The role of the professional adjuster in the early stages of a loss is to inspire realistic expectations

by explaining provisions and procedures in the claim process. A time line must be developed for the resolution of the claim and cooperation by the insured encouraged so that his personal preferences can be accommodated. Unfortunately, most insureds are conditioned otherwise since many automatically conclude that their best interests will not be represented by the insurer. However, an adjuster who addresses problems of the loss early, with a sense of urgency, will help build confidence and mitigate the chances of further damage or claim.