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INSURANCE

Cheaper lawyers can end up costing you more money

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It is a fact of life in the insurance industry: Premium dollars are followed by claims and litigation. No successful insurance company can ignore the cost of defense and exposure to indemnity payments.

Because of the volume of claims and litigation, insurance claims executives are highly sophisticated consumers of legal services and are therefore able to manage and control to a large extent the cost and quality of services they and their insureds receive. Given that control, how should it be exercised to provide an effective, high-quality legal defense that minimizes indemnity payments, attorney's fees, costs and expenses?

First, it is necessary to establish a well-organized, highly trained and experienced in-house claims staff or hire equally reliable independent claims professionals. These claims adjusters must be familiar with the basic legal issues involved in the handling of their particular claims.

Depending on the coverages provided and claims experienced by the particular insurance company, adjusters should be trained and continually educated with a basic understanding of comparative fault, product liability, wrongful death, professional liability, liquor liability, contribution and indemnity, premises liability, the guest statute, unfair claims settlement practices, statutes of limitation, coverage issues and conflicts, governmental immunity and liability, liens, Worker's Compensation, and medical terminology.

The enterprising claims manager will find no shortage of defense firms willing to present in-house seminars or training sessions covering these basic Indiana laws and principles.

Second, claims managers must recognize the value and capabilities of their highly trained staff or independent claims professionals and encourage them to fully utilize their skills. Armed with sufficient knowl-

edge and experience, claims professionals are capable of investigating, evaluating and settling a high percentage of claims before suit is filed. This is true even when the claimant is zealously represented by competent plaintiff's counsel.

Nevertheless, a certain percentage of claims cannot and will not be resolved short of litigation. In these cases, defense counsel is necessary. And because attorneys and law firms are not interchangeable commodities, it is necessary to use care in selecting experienced and dedicated defense counsel that will efficiently and effectively resolve the litigation in a prompt and professional manner so the insured feels well-represented and pleased with the outcome.

Fortunately for the insurance industry, competitive pressures have maintained hourly rates charged by quality defense counsel substantially below the market rates for commercial litigation.

Hourly rates, however, are not the sole criteria for selecting cost-effective defense counsel. "The best lawyers are expensive," says USF&G's general counsel, John A. MacColl, "but the second-best lawyers are very expensive." Many insurance companies now realize that quality representation, even at a higher hourly rate, will not only reduce indemnity payments, it can save defense costs as well.

Regardless of what rate a lawyer or firm charges, a claims executive should demand and expect certain things from defense counsel:

- immediate written acknowledgement of the assignment to both the insured and company, with an outline of additional investigation information that can be obtained by the claims adjuster and provided to defense counsel;

- prompt and concise written correspondence summarizing operative facts of the case and applicable law along with counsel's recommendations for further handling, based on a considered evaluation of liability

and damages, including the probability of prevailing on defense motions or at trial; the verdict range if the case is tried and lost; and the cost of defense; and

- sufficient experience, analysis and confidence to advise of further handling that is *not* required.

Certainly, there are cases with catastrophic exposures or where the insured's product or reputation is at issue that demand the most thorough and vigorous defense. In these cases, defense counsel must have the intellect and discipline, skill and cunning, wits and insight, energy, creativity and stamina to best any opponent.

However, it is imperative that the defense counsel and claims executive recognize these cases early and distinguish them from the more routine matters so that unnecessary costs and expenses are avoided.

Litigation over money damages is rarely a matter of life or death. Nevertheless, like doctors concerned about medical malpractice, many defense lawyers want to run every test, research every issue, and take every step in the litigation process before making a decision or advising their client how to proceed. But it is the experienced, successful and properly motivated defense counsel that can accurately identify what work does not need to be done, and advise his or her clients so that resources can be saved or allocated to another case where additional work *will* make a difference and produce a more favorable result.

When claims executives are provided with the critical information and advice they should demand and expect from defense counsel, they are then prepared to exercise their good business judgment on how to proceed to minimize their costs and exposure.

It is this early and accurate determination of whether additional information or work is needed and whether a case should be tried or settled that is the key to cost-effective claims handling and controlling litigation expense.*

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