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STRATEGIES FOR MANAGING COMPLEX CLAIMS

By Patricia L. Harman

WHEN IT COMES TO COMPLEX CLAIMS, A VARIETY OF FACTORS CAN contribute to their intricacy including: numerous stakeholders, the involvement of several insurers or reinsurers, the failure of multiple systems or a single factor that contributes to significant losses, the possibility of litigation and sometimes, the total cost of the loss. Determining liability and how coverage applies to a claim, can also be contributing factors.

Understanding some of the issues that affect or influence a complex claim can help reduce mistakes and help insurers be more proactive. Thinking through various aspects of the claim can also improve the outcomes for everyone.

Claims Magazine asked several experts to share their insights on the different phases involved when handling complex claims. Wendy Stein Fulton is a partner with Mound Cotton Wollan & Greengrass LLP, focusing on bad faith and insurance coverage litigation, as well as commercial and construction litigation, and professional malpractice.



JIM KREMER

Rob Blasio is managing director of Gallagher Bassett Specialty, a division of Gallagher Bassett, with an emphasis on a number of high-risk liability areas.

Jim Kremer is the EY Americas claims transformation co-leader and managing director of insurance consulting for Ernst & Young LLP with a focus on reducing overall insurance claims for large organizations. Hanif Sidi is the EY Americas Property & Casualty Transformation Leader.

CLAIMS: What are some of the biggest mistakes insurers make in handling complex claims?

WENDY STEIN FULTON: Some of the biggest mistakes are waiting too long to engage counsel to evaluate time-limited demands, and hiring counsel who are not familiar with the state in which a time-limited demand is made. The worst advice I have seen is when insurers receive advice to pay a claim that is absolutely not covered because their coverage counsel is not familiar with the jurisdiction's law.

ROB BLASIO: Bad news is never accepted easily. Oftentimes, insurers and self-insured organizations react to high exposure or complex matters by over-analyzing instead of being intellectually honest about the exposure from the outset. This approach can lead to delays in reserving and resolution.

Insurers also often fail to make immediate contact with all of the parties involved and fail to explain what is, or may be, a complex claim and that it may result in litigation. Having early discussions with opposing counsel, other insurers and other parties can identify what is really at the heart of the dispute. In some instances, this early communication can focus the information exchange and narrow the scope of the initial investigation to potentially allow for a more cost-effective resolution — before significant costs are expended by all parties and everyone becomes entrenched.

JIM KREMER: Failing to have a cross-functional resource team to fully respond to a complex claim situation. This includes having the right adjusters, leaders and specialized external resources with the necessary skills to respond to the loss with the appropriate strategy to mitigate excessive loss costs.

Relatedly, attracting and retaining high-performing talent is becoming a challenge for the claims industry. Insurers need to better invest in their claims team, and fully developing their skills should be a top priority.

CLAIMS: What are some of the factors insurers should be monitoring as part of a complex claim?

RB: Contracts and relationships among parties are key areas that need to be considered and constantly reviewed, especially in multi-party complex claims/litigation.

The amount of co-defendants' insurance coverage, and who the carriers are, is also vital information in evaluating exposure.

JK: Reputational risk, legal costs, and other regulatory considerations, such as punitive damages should be tracked.

WSF: Some factors that insurers should be monitoring but I see do not always do so: (1) the quality of defense counsel since assignment of defense counsel who is not competent to handle a complex claim could be an element of bad faith following a bad result, (2) responses to tenders since so many make their tender and then fail to follow up on same, and (3) engagement with the insured. While it is defense counsel's responsibility to report on the substance of the claim, the insurer should still be communicating directly with their insured so that it is a partnership rather than an adversarial relationship.

CLAIMS: Who are some of the experts insurers should include as part of the claims investigations?



WENDY STEIN FULTON



“ALWAYS BE MINDFUL OF OTHER BUSINESS CONSIDERATIONS POLICYHOLDERS MAY HAVE WITH OTHER PARTIES INVOLVED IN THE CLAIM/LITIGATION. PREPARING FOR, OR ADDRESSING, OTHER SENSITIVITIES OR MOTIVATORS IN ADVANCE OF DISCLOSURE TO OTHER PARTIES OFTEN LEADS TO BETTER OUTCOMES.

—Rob Blasio, Gallagher Bassett Specialty

WSF: That will entirely depend on the kind of case at hand. Generally, the insurer should approve all reasonable requests to hire experts as recommended by defense counsel, but as for an expert strictly for the insurer, they should hire monitoring counsel who is a subject matter expert in the underlying action who can supplement the available information with defense counsel so that the tough settlement versus trial decisions can be made.

RB: This certainly depends on the type of claim that is being managed, but in construction, for example, insurers should include experts in construction defect and various property types; architects, engineers, trade experts or accident reconstructionists to investigate causes and resulting damages; and attorneys to preserve evidence.

CLAIMS: What are some steps insurers can take to mitigate legal liability as part of a complex claim?

JK: To mitigate legal liability, one step insurers can take is fully investigating and identifying other insurance or other liable parties who can respond to the loss.

RB: In addition to insurers making immediate contact with all parties involved, carriers or third-party administrators should aggressively partner with their counsel to jointly prepare an initial investigation and discovery/litigation plan. Oftentimes, the savings in defense expense can be greater than indemnity and better impacted by an efficient, collaborative partnership in the litigation between the insurer, its TPA, policyholder and counsel.

WSF: Engage early and often with the insured so that all decisions are made together, make sure defense counsel regularly reports on the claim, and analyze and reserve on any coverage issues as soon as possible so that no one is surprised at coverage issues raised at mediation or later. If it is a significant coverage issue for which a declaratory judgment will be filed, file it at

the beginning of the case if possible, not on the eve of a major litigation event.

CLAIMS: What's one key point for insurers to keep in mind while handling a complex claim?

HANIF SIDI: Typically, the first time a customer will interact with their insurance company after purchasing a policy is when filing a claim. While insurers manage many claims each year, the claims experience for a customer can be lengthy, confusing and cause uncertainty. The key point for insurers to keep in mind while handling a complex claim is to transparently communicate with the customer to alleviate stress and effectively facilitate the exchange of information. This includes outlining the process, introducing any key players involved and sharing a timeline for recovery.

WSF: Make sure that all efforts made to protect their insured's interests are reflected in the company's file. If any act, communication, etc. is not in the file, it did not happen.

RB: Complex claims involve more than a liability analysis. It is absolutely critical to assess and evaluate damages as a component of any evaluation. Always be mindful of other business considerations policyholders may have with other parties involved in the claim/litigation. Preparing for, or addressing, other sensitivities or motivators in advance of disclosure to other parties often leads to better outcomes.

Complex claims can create reputational risk exposures for insurers or organizations, raise questions about causation and liability, trigger multiple policy exposures, involve high-profile incidents or individuals, and involve significant monetary losses. Understanding the risks and issues involved, and taking a team approach with the necessary expertise can help insurers navigate these claims more effectively.

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