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8 best practices for claims litigation management

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The core of effective litigation management is good communication with everyone involved in a case. "With good communication, you can eliminate most surprises, whether you deal with one case a year or hundreds," says Michael Zeoli, litigation management manager, claims group, Chubb Group of Insurance Companies, Warren, N.J.

W. Brett Mason, special counsel in the Baton Rouge, La., office of Stone Pigman Walther Wittman LLC, agrees. "You have to start with and maintain an open line of communication between the risk manager or claims litigation manager and the trial attorney," he says. "The trial attorney has to understand the litigation manager's goals for a given case at the outset."

Every organization, regardless of size, is likely to face litigation sooner or later. What makes a difference is the way the organization handles its legal matters and how everyone involved works together. Here are some best practices to help you manage litigation for your company.

1. Establish a Process before You Need It.



Although every case is different, it should follow the same workflow, Zeoli advises. Start with a case assessment, then create a road map of where the case is going and have all stakeholders agree on a strategy.

It's helpful if the case manager has a litigation background, but it's not strictly necessary. Zeoli believes that someone who has worked in claims and with attorneys for several years can be successful at litigation management. Both the manager and litigator have to understand that the claims process is different than the legal process.

If you have the litigation management workflow in place, Zeoli says, handling a class action or major catastrophe litigation is all a matter of scale. Although a class action may require heightened awareness and attention, it should stay within the same workflow.

2. Select a Panel of Attorneys.

Zeoli recommends that you establish a relationship with a panel of firms to minimize potential conflicts of interest or lack of availability. He calls this “one of the greatest tools” for litigation management.

Look at the capabilities of the entire firm, not just the partner with whom you're accustomed to dealing when selecting the panel. Depending on the business you're in, you likely will need subject matter expertise for some cases—like intellectual property—not just experts in insurance coverage.

Large multistate or multinational organizations also need attorneys in the major areas in which they do business. If a case comes up in a jurisdiction where you don't have retained counsel,

3. Assess the Case Quickly.

Zeoli recommends that you set a time limit, such as 60 days, for a case assessment from the lead attorney on the case, whether in-house or outside. The initial assessment usually provides a high-level overview of the case including:

- The factual basis of the claim
- Any significant legal issues
- Any potential defenses
- The likelihood of success
- An initial estimate of the time and cost, subject to adjustment.

Mason finds that most litigation managers conduct a cost-benefit analysis before deciding to litigate or settle. But attorneys believe that the longer they avoid paying a settlement the better. "It can be a good strategy," he says, "but it may not meet your client's needs." A company with a large deductible and self-insured retention may be more interested in settling, partly to avoid bad publicity or distractions, regardless of the case's merits.

4. Review Budgets and Invoices Carefully.

Make sure there are budgets in place that correspond to the project plan, Zeoli says. The budget should be based on the list of tasks to be done and who will do them—for example, a partner, an attorney from your company or the claims processor.

Zeoli recommends that you review invoices carefully because they tell a story. For example, you may see a line item for a deposition that you didn't expect, requiring you to reach out to the attorney for an explanation. "Everyone has to work together so the cases don't go off track," he adds.

Mason asks for a meeting with the litigation manager to review billing guidelines at the outset so he can understand what the manager's goals are. Most managers need regular updates and invoice reviews for their reports to their management team. At the same time, managers need

to understand the worst-case scenario so they can budget for that. Mason believes that when the trial attorney understands the information the litigation manager needs and why, the attorney can be more responsive.

5. Get Organized, Stay Organized.

The better organized you are, the easier litigation is to manage, Zeoli points out. You can use whatever tools you like—a checklist, for example—to maintain all of the key information, including:

- The names and contact information of the parties, their attorneys and the firms involved in the case as well as their status as defendants or co-defendants
- Names and contact information for claims processors, investigators or expert witnesses
- A calendar of critical dates and deadlines
- A list of all of the documents that are needed for the case, including insurance policies, contracts, certificates of coverage and statements of value.

“If you have electronic tools in place, such as matter management or billing software, be sure to use them,” Mason says. He recommends developing a checklist, especially for standard cases, and assigning someone on each side to manage the list. It should become part of the project plan and be reviewed regularly. Generally, you can use the reports in the litigation management tool to create your checklist.

6. Use Data Effectively.

Jason Parkman, CEO of Mitrtech, a provider of enterprise legal management solutions based in Austin, Texas, says that companies should take advantage of the data they have to help make decisions about the management of legal matters, including litigation. He recommends comparing the expertise, time management skills and case results of staff attorneys against outside attorneys to determine cost effectiveness. Some of Mitrtech's clients, which include six of the 10 largest property and casualty carriers, have found that in some cases they received the same result with staff attorneys at half the cost. The carriers now use staff attorneys exclusively for some matters unless the case is likely to reach a certain liability threshold or for another strategic reason

Parkman also believes that the best understanding of how lawyers work is a data-driven one. He advises that litigation managers, especially those who are new to a company, spend a lot of time reviewing the data and how long repeatable cases take. Then, the litigation manager can determine averages or ranges and use the data for more effective early case assessment. The data can also provide information about liability in a typical case.

Zeoli agrees that you should have a centralized resource to leverage the data to make good decisions. At a minimum, he says, you need a system to manage all the documents a case generates, whether you buy one or build it yourself.

7. Expect Regular Updates.

Although the value and complexity of the case will vary, Zeoli says, try to have a uniform approach about status updates. He builds monthly updates into the plan with the expectation that updates will occur whenever something happens in the case, such as a filed motion or a judge ruling on the motion. He also recommends reviewing and updating the budget and the schedule when the case takes an unexpected turn.

You also can use the reports available in your litigation management system to review the status of a case at any time. After you review the reports, call your attorney with specific questions; you don't have to wait for the attorney to formally update you.

8. Establish Trust and Loyalty.

By using the same firms, attorneys get to know the organization better and can be more effective at staffing and handling cases. "The client has to trust the managing attorney to know who is best suited for a specific task," Mason says. For example, a more experienced attorney may be able to write a brief on a complex subject in far less time than an associate, even at a higher billing rate. When clients use their attorneys consistently and don't shop around for every case, they're less likely to have billing issues and the churn will be minimized.

Zeoli agrees that with a panel, you already have had conversations about billing guidelines, when to use associates versus partners, and what issues are important to your organization. You've built up trust on both sides.

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