



Insurance Claim Fundamentals For In-house Counsel

Presented by

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- Effectively assists insureds with reducing risk, controlling losses, and decreasing insurance costs
- Global experience in a broad range of commercial and personal lines products Experienced Employee Benefit professionals providing expertise and cost-effective solutions to complex problems, compliance support, and cutting-edge service capabilities to small, medium and large employers
- Over 250 skilled insurance professionals with offices in New York, New Jersey, Connecticut, California, Florida, and Indiana

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- Environmental Services
- Family Entertainment Centers
- Financial Institutions
- Food, Restaurant, and Hospitality
- Health, Education, and Social Services
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- Personal Lines Insurance
- Professional and Medical Services
- Real Estate
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Services We Offer

- Insurance risk transfer consulting
- Complex claims consulting
- Risk management services
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- Employee benefits
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- Workers' Compensation Classification Studies
- Experience Modification Studies

Overview: Introduction Insurance Claims Fundamentals: Agenda

General Counsel often have limited resources to manage large-scale insurance claims and complex disputes effectively.

Discussion topics include:

- How to decode policy ambiguities
- Being proactive about claims management, duties to cooperate, subrogation
- Strategic litigation and negotiation: When to litigate, when to negotiate?
- Handling bad-faith insurance claims, and
- Considerations in multi-policy and multi-jurisdiction claims

Overview Continued

For managing and navigating insurance claims effectively, general counsel can benefit from a variety of best practices aimed at maintaining efficiency, compliance, and risk management.

Early and Accurate Claim Reporting: Prompt and precise incident reporting reduces complexities, liability, and costs. Implementing a structured reporting mechanism helps capture critical details early to avoid coverage disputes.

Structured Claims Processes: A clear, documented claims procedure is vital. Define each step, assign roles, set timeframes for claims handling, and manage communication with internal and external parties.

Data Management and Communication Protocols: Secure data handling and organized communication between insurers, service providers, and internal teams minimize miscommunication and ensure smooth claims progress. Establishing protocols and regular meetings aids in efficient processing.

Performance Metrics and Continuous Improvement: Monitoring key performance indicators, such as claims resolution times, helps identify areas in need of improvement. Incorporating a continuous improvement cycle, including scenario-based feedback, refines the claims management process over time.

Effective Management of Large Scale Insurance Claims and Complex Disputes

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Poll #1: Experience Level with Insurance Claims:

- How would you rate your level of experience in managing insurance claims and complex disputes?
 - Beginner: Limited exposure to insurance claims
 - Intermediate: Some experience, but not a primary focus
 - Expert: Significant experience, often led large or complex claims

Poll #2: Current Challenges in Claims Management

- **Which of the following do you find most challenging?**
 - Understanding ambiguous policy language
 - Proactively managing claims to reduce escalation
 - Deciding when to litigate vs. negotiate a claim
 - Handling instances of bad-faith claims from insurers
 - Navigating multi-policy and multi-jurisdictional claims

Understanding Policy Ambiguities

Nature of Policy Ambiguities:

Legal language is often broad or open to interpretation.

Standard industry terms can lack precise definitions, leading to multiple interpretations.

Caution: that the meaning of a term or phrase is arguable or undefined does not itself establish actual ambiguity. Courts may already have decided the meaning, e.g., terms like "transit," "mysterious disappearance," "reasonable efforts," "entrustment."

Potential for Dispute:

Ambiguities often lead to disagreements on coverage scope and obligations.

Challenges in decoding ambiguous policies

Interpretation Variances:

Insurers may interpret terms narrowly to minimize liability.
GCs need to predict and counter restrictive interpretations.

Litigation Triggers:

Ambiguity is a common cause of policy-related litigation. When to decide to negotiate or litigate ?

Examples of Key Ambiguities:

Coverage for "catastrophic failure" in business interruption policies; "assault and battery" and "sexual molestation"

Managing Claims Proactively

Importance of Early Action:

Prompt action prevents missed deadlines, lapses, and procedural errors.

Challenges in Timing and Documentation:

Gathering evidence early can be difficult if internal systems are decentralized.

Consequences of Reactive Management:

Delays, disputes, and loss of leverage if claims are poorly documented or delayed.

Anticipating Potential Defenses

Common Insurer Defenses:

Insurers often use defenses like prior knowledge, insufficient proof, or policy exclusions. This is particularly true for conditions precedent, e.g., alarm and protection clauses.

Challenge of Foreseeing Defenses:

Each claim type has unique vulnerabilities that must be anticipated. What are they?

Examples:

Business interruption: Insurer may argue that interruptions were avoidable.

Navigating Multi-policy Claims

Overlapping Coverage Complexities:

Multiple policies may have overlapping or contradictory terms, but different legal schemes complicate efficient interpretation of conditions (particularly without a choice of law clause)

Risk of Inconsistent Interpretations:

Different insurers may interpret the same incident differently.

Examples:

Liability claims where multiple policies have different deductibles or coverage caps



Managing Multi-Jurisdiction Claims

Jurisdictional Conflicts:

Variations in state laws on claims handling, liability, and policy interpretation.

Additional Regulatory Requirements:

International claims may require compliance with foreign regulatory standards.

Challenges in Synchronization:

Synchronizing responses and documentation across jurisdictions is often complex.



Deciding on Litigation vs. Negotiation

Risk Assessment Needs:

Weighing the costs, risks, and probable outcomes of litigation vs. settlement.

Factors Influencing Choice:

Severity of damages, time constraints, and long-term business impact.

Examples of Decision Complexity:

Complex or high-stakes claims may warrant litigation to avoid a precedent of settlements.

Challenges in Strategic Negotiations

Negotiation Dynamics:

Insurers may hold leverage due to policy ambiguities or procedural delays.

Settlement Obstacles:

Insurers may stall or offer lower settlements to prompt quick resolutions.

Understanding Bad Faith Insurance Claims

What Constitutes Bad Faith:

Deliberate delays, unjustified denials, or inadequate investigations by insurers.

Impact on Claims Process:

Bad faith actions prolong disputes and increase financial strain.

Common Bad Faith Practices:

Refusing valid claims, misrepresenting policy terms, or conducting biased investigations.

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