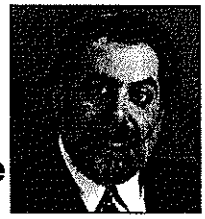
Corporate Exposure: Insurance Carrier's Claim Service Obligation



Harry P. Mirijanian

When an insured purchases a policy, one of the fundamental features the contract stipulates is the carrier's responsibility to defend and protect the policyholder's interests in any litigation. As a matter of fact, policyholders are often frustrated that the carrier makes all the litigation decisions in the handling and settlement of a claim. But the carrier does not do this without the risk of being sued for "bad faith" handling of the claim. Carriers are required to handle the claims in a prompt and professional manner without jeopardizing the insured's reputation or possibly exposing the insured to additional costs. To illustrate: Frequently a claimant's attorney will make a "time-restricted claim settlement offer early in the claim. Essentially, the claimant's attorney is making an offer to settle the claim, and in so doing will stipulate a time frame in which the carrier must respond; otherwise, the offer is withdrawn. There have been cases in which a time restricted settlement was issued and the carrier failed to respond in the time frame stipulated. In these cases, not only was the offer withdrawn, but the claims settled in excess of the policy limits. Naturally, the policyholders sued the carriers in these cases, arguing in each instance that if the initial time settlement offer had been accepted, the case would have been settled within the policy limits and the insured would not have had to contribute to the final settlement.

Many carriers believe it has become standard practice on the part of the claimant's attorney to make time-restricted offers simply as a means of exposing carriers to bad faith claims. There have also been documented cases, however, in which the courts refused to sanction bad faith judgments against the carrier because the deadlines were not realistic. You can imagine that, in certain claims, it is difficult for the carrier to complete all of its investigations and assess liability. In such cases, bad faith claims are routinely dismissed.

There is also little likelihood of a bad faith judgment if the claim is settled within policy limits. For example, if you had a $1 million policy limit and the time-restricted settlement offer was $100,000, and the claim was ultimately settled for $900,000 because the carrier did not respond within the time frame, the courts are unlikely to find fault in the carrier's handling of the claim. The fundamental premise here is that since the policyholder was not financially affected, there is no basis for a bad faith award. The exception to this is when the insured is in a retrospective rated policy and the carrier is settling claims with the insured's money. Courts have permitted bad faith judgments in these types of policies (using the above case as an example, the carrier's failure to respond cost the insured $800,000 more than originally demanded).

Many claimant's attorneys have argued that time offer demands benefit everyone by eliminating the court's involvement and bringing all parties to the negotiation table earlier in the process and eliminating wasted funds on numerous motions and increased legal costs.

But no matter how the carrier responds, they are in a difficult position when faced with a time-restricted offer. The carrier must protect the policyholders' interest by not exposing them to possible settlements in excess of the policy limits, and at the same time, they must also minimize payments. This is hardly an enviable position, which is why we have repeatedly emphasized the importance of evaluating a carrier's claims handling capability before selecting an insurance company to represent your organization. State laws require carriers to exercise good-faith claims-handling practices and will hold a carrier liable for punitive damages where permitted.

What can the policyholder do to minimize bad faith claims and reduce ultimate claims settlements? The answer is simple: involvement. Policyholders must stay active in claims management issues. We have encountered clients that believe once they have submitted the claim to the carrier, their involvement in the matter is finished. To the contrary—their involvement just begins at that point. We advocate periodic claim reviews to assess the carrier's performance and offer assistance in adjudicating the claim.

We have experienced a number of situations in which the carrier was simply not aware of certain changes in the operation, or other factors that could favorably affect the insured's defense. Remember, regardless of the ultimate claims settlement or its reserve value, these figures affect your loss experience and can do so for years to come. Work with your carrier and push to settle claims promptly and fairly. ■

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