

Basics of Insurance Defense

Krista M. Corabi, Esquire

kcorabi@summersmcdonnell.com

- I. Receive file from insurance carrier
 - a. Review its Contents:
 - i. Claim Log: What is it?
 1. All notes taken by adjustors who have handled the claim until it has been turned over to attorney
 2. Depending on the insurance company, some logs are more detailed than others.
 3. Statements of parties or witnesses: some claim handlers will take detailed notes of all conversations.
 4. Background on plaintiff: injuries and damages claimed, treatment providers, employment, age, marital status,
 5. Insured's policy limits: what type of coverage does the insured have?
 - a. Example: \$25,000 per person/\$50,000 per accident
 - i. No one plaintiff can receive more than \$25,000 but there is \$50,000 to spread among any plaintiffs/claimants
 - b. It is important to know your client's policy limits. Perhaps is it best to work something out quickly, if policy limits are low.
 6. Settlement negotiations: what has the adjustor offered before your involvement? What range of value has the claim been given? How has the claim been evaluated prior to your involvement? Knowing how your adjustor has evaluated the claim will help the attorney move forward with settlement.

7. Has insurance carrier issued any payments to the plaintiff?
Perhaps for property damage, out-of-pocket expenses, medical treatment.
 - a. Make sure you don't pay the plaintiff twice for the same alleged loss.
- ii. Police Report: who, what, when, where. Police officers are first responders. They usually speak with parties and witnesses soon after the incident occurred, so memories are fresh.
- iii. Medical records: what injuries are claimed? What treatment has occurred? The records may indicate prior medical history that will affect causation.
- iv. Employment records: is there a wage loss claim? Was plaintiff in course and scope of employment? Did the incident in question truly prevent the plaintiff from attending employment or carrying out job responsibilities? If so, did they actually lose income?
- v. Photographs:
 1. Damage to vehicles or property
 - a. How severe is the damage? What type of impact occurred?
 2. Scene: where did the incident take place?
 3. Injuries: scarring, bruising, disfigurement
 - a. Permanent injuries depicted?
- vi. Estimates for repair: what is included? Is it truly related to the incident? Make sure the estimate doesn't include damage that may not be related to the incident.
- vii. Recorded statements: parties, witnesses
 1. When did it occur? Is it close in time to the incident?
 2. Does it conflict with the police report or another party's version?

3. Does the party appear to have a strong recollection of the incident?

b. Preparing for initial conference call

i. Strategy for defending case: Do you have a liability defense?

1. Can any negligence be placed on another party?

a. How will that reduce or affect the plaintiff's recovery?

2. Or, if liability is clear, move on to the plaintiff's injuries

ii. What types of pleadings, filings, motions may be needed?

iii. What discovery will you serve?

iv. Are any site inspections necessary?

v. Timeline:

1. Do local rules require discovery to be completed by a certain date?

2. Are you under any time constraints or aware of any deadlines?

c. Speak to the insured: get their version of the incident

1. Are you admitting liability?

a. Is it best to admit fault?

2. Is there a liability defense?

a. Could there be an apportionment of liability among the parties or other defendants?

3. Are there any other defenses to be raised, such as a sudden emergency?

4. Is there anything in their record or past that would affect the case or their ability to give testimony?

II. Pleadings/Service

- a. Check the docket: what has been filed- Writ or complaint?
 - i. Has service been accomplished pursuant to the local rules?
 - ii. At the outset, determine if there are any statute of limitations issues
- b. Prepare a responsive pleading
 - i. Note: service and pleadings are time sensitive- check your local rules!
 1. Preliminary objections
 2. Answer and New Matter
 3. Should any additional defendants be joined?
 4. Do you need to prepare any cross claims or counter claims?

III. Discovery

- a. If no issues with service of original filing- serve discovery
- b. Use of authorizations or subpoenas- which is best?
 - i. Subpoenas may be more costly, but you won't have to wait for the plaintiff to return signed authorizations
 - ii. Investigate plaintiff's medical history, both pre- and post-accident
 1. Are the plaintiff's injuries causally related to the subject accident?
 2. Are there any pre- or post-accident incidents that may affect a plaintiff's injuries?
 - iii. Investigate plaintiff's employment history: have they ever been injured on the job? Does their job require heavy lifting or a lot of physical activity?
 1. Has the plaintiff truly lost income? Are they paid salary or hourly?
 2. An IRS authorization may be necessary to determine wage loss

- c. Depositions: who needs deposed?
 - i. Parties: best way to determine plaintiff's claims, ongoing complaints, and damages
 - ii. Witnesses: what did they see? Is there testimony believable?
 - iii. How does the person offering testimony come across? Are they likeable? Do they appear to be telling the truth?