

Work Comp Roundup

Reduce Your Workers Comp Costs

8 Categories To Define Winning Workers' Comp Litigation Strategy

Michael B. Stack · Monday, May 15th, 2017



Legal fees in litigated workers compensation claims can quickly become a significant part of the overall claim cost. Fortunately, there are some very good ways to control legal cost without having a negative impact on the overall claim settlement. The best time to establish control over legal fees is when the defense attorney is first employed; however, the best time to control the overall strategy of the litigation is before

counsel is even hired.

Prior to hiring counsel, a fast track defense strategy should be established to ensure that appropriate actions are taken immediately upon notification of a claim. [The individual components of a fast track strategy are beyond the scope of this article.] The establishment of some basic ground rules for the legal fee billing before the attorney goes to work on the workers compensation claim will result in a measure of cost control without sacrificing the best possible settlement of the claim.

Litigation cost control is much more than negotiating the hourly rate and whether or not you will be charged for postage. There are Best Practices for Litigation Management that should be utilized as a major part of your legal cost control. The Litigation Management Best Practices can be broken down into easy to measure performance goals. The following questions will assist you in determining if your current litigation program is controlling cost fully.

Defense Counsel Selection:

- Is the defense counsel on your company's list of approved counsel?
- Is the defense counsel selected a law firm, or a specific attorney (preferably), within the law firm? Many carriers have an "approved list" of attorneys they use; this doesn't necessarily mean those are the best attorneys or the most knowledgeable for your purposes, so consider their qualifications carefully and if you have another attorney you wish to use, discuss adding him/her to the list of approved counsel.
- If the defense attorney is new to representing your company, has the attorney been provided the terms and conditions of the assignment?
- Have they visited your operations, seen your products and know the basic requirements of the jobs within your workplace?
- Have the reporting requirements been clearly stated?
- Was a litigation budget request incorporated into, or attached to, the assignment letter?

The Answer:

- Did the workers compensation adjuster refer the matter to defense counsel timely when an answer must be filed?
- Does the employer provide the complete facts of the injury immediately such as how the injury occurred, photographs of the accident, information about weight of objects lifted, the employee's application for employment, information about any prior injuries, prior claims, or prior medical absences. Having the employment file is very helpful.
- Does the defense attorney have everything needed to complete ALL blanks on the First Report of Injury. Does he have the OSHA Report?
- Does the defense attorney offer arbitration or mediation as an alternative to protracted litigation?

Initial Legal File Handling:

- Are all medical and/or indemnity issues covered by the workers compensation policy?
- Is the potential exposure on the claim evaluated correctly?
- Is there an economic justification for a quick disposition of the claim?
- Are there any statute defenses that need to be addressed?
- Are there any unique aspects of the claim that could alter the outcome favorably or unfavorably?
- Are all potential third parties noted?

Defense Counsel Acceptance:

- Does the defense counsel send an acknowledgment of the assignment to both the workers compensation adjuster and to your workers compensation coordinator?
- Does the defense counsel provide an initial review and evaluation report within the first 30 day?

- Does the initial review offer alternative courses of action and the probable outcomes?
- Does the defense counsel provide a detailed budget plan within the first 30 days?

Defense Counsel Staffing:

- With the acceptance of the assignment, did the defense counsel specify who will be working on the claim? (Unless the claim is extremely complex, the defense attorney, possibly one junior associate and one paralegal are all of the law firm that should be involved. Multiple associate attorneys and multiple paralegals will add time [cost] learning the claim before being able to proceed with an activity).
- Is the hourly rate for each of the law firm members clearly stated?
- Does the attorney do work that should be done by the paralegal?

Budget:

- Is the budget completely itemized?
- Is research time included only for extraordinary issues?
- Does the budget include the cost of any experts that will be retained?

Claim Handling:

- Does the defense counsel make recommendations for any additional adjuster work that should be done? (Defense attorneys are notorious about having the paralegals do the adjuster's job of obtaining medical records and other documentation).
- Does the defense attorney have the adjuster hire other vendors (surveillance, nurse case managers, vocational rehabilitation, etc.) or does the defense attorney complete the adjuster's work?

Actions of Defense Counsel:

- Is defense counsel avoiding the expenses of depositions and other discovery if it is the intent to settle the claim? Often, some discovery prior to settlement can reduce the amount of the ultimate settlement.
- Is the defense counsel requesting only necessary depositions?
- Is the defense counsel reporting significant developments timely?
- Is the defense counsel reporting the progress of the claim at least every 90 days if the case is moving slowly?
- Do the reports from defense counsel cover all pertinent information without repeating prior reports?
- Does each report include an action plan to move the claim forward?

Hearings / Trials:

- Is the hearing / trial date reported as soon as it is known?
- Does the defense attorney provide a pre-hearing / pre-trial report at least 30 days ahead of hearing / trial?
- Does the defense attorney provide a strategy for the hearing / trial?
- Does the defense attorney timely request additional settlement authority when needed?
- Does the defense attorney provide a timely update or report on the hearing / trial?

Legal Bills:

- Is the amount billed for each activity appropriate?
- Are the bills properly itemized with each activity being billed separately? (As opposed to block billing where several activities are lumped together and one charge is given for all work done).
- Do the legal bills follow the defense attorney stated course of action?
- Are the legal bills in compliance with the litigation budget?

If you are uncomfortable trying to control the litigation cost or feel you need an expert to review the litigated workers compensation claims, please contact us for assistance.



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