
The Ninth Annual Texas Legal Update

Claims Handler's Checklist – Third Party Liability Claims

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I. Introduction:

- A. Identify the parties.
 - i. The Plaintiff;
 - ii. The insured;
 - iii. The agent;
 - iv. Is there an attorney present or in the background.

- B. Duties owed to:
 - i. The Plaintiff;
 - ii. The insured;
 - iii. The agent;
 - iv. Is there an attorney present or in the background.

Duty to your Insured: Fast, fair, friendly service and prompt, thorough and objective handling of a given individual's claim. Duty of good faith and fair dealing.

Duty to Plaintiff: Promptly and timely investigate the claim, determine liability and handle the claim quickly and efficiently. Such claims handling would probably put a lot of Plaintiff attorneys out of business for lack of demand. When the Plaintiff is ignored by the insurance company, or in the Plaintiff's opinion he was abused in some fashion by the insurance company, he will seek legal counsel.

Duty to the Agent: Usually contractual. The agent is the Individual who usually has the first relationship with your insured and believes that the insured is fully "covered" for any and all claims.

II. Investigation:

- A. Every good investigation starts out with "coverage".
- B. The facts of the case from the perspective of:

- i. The Insured;
- ii. The Plaintiff.

C. Reservation of rights.

Reservation of rights should be clear and distinct outlining the policy provision including conditions and exclusions that may apply. Consider independent attorney opinion letter/legal opinion, advice of counsel is not a guarantee.

D. Investigation/timeliness of investigation.

- i. Facts of the accident; and
- ii. Date and time of the loss; and
- iii. Location of loss.
- iv. Witnesses, statements of witnesses.

E. Start a checklist and timeline to complete investigation.

F. Documentation.

- i. Damages, medical, lost wages, property damage;
- ii. Obtaining medical authorization, wage authorization, estimates for property damage;

G. Coverage.

Without coverage for an occurrence, there is no duty to defend or a duty to indemnify the insured. Coverage is usually first verified by the insured's agent and then again verified by the claims department of the insurance company.

If coverage questions arise, the claims file should probably be split into (1) factual investigation and (2) a coverage investigation. This is due to the fact that the same insurance adjuster in good faith, and pursuant to his fiduciary duties owed to the policy holder, probably cannot represent both the policy holder and the insurance company simultaneously. To do so would generate an immediate conflict of interest.

H. Factual Investigation.

- i. Secure the insured's statement of facts.
- ii. Secure the claimant's statement of facts.
- iii. Complete a scene investigation, including photos and a diagram.

- iv. Secure copy of all police reports, including supplemental reports.
- v. Secure recorded statements of all witnesses.
- vi. Appraisal of both insured and claimant's vehicles for physical damage, estimates for repair and/or replacement.
- vii. Collect all specials, medical bills, medical reports, lost wage statements, property damage estimates, etc.
- viii. Reserves. Reserves are crucial to the life blood of the insurance company. Reserves can go up and down in monetary value as the claims file progresses. Periodically review the reserves.

III. Acceptance or Denial of Claim:

- A. Pay all or part of the claim to control the Plaintiff.

IV. Offer:

- i. Timeliness of offer;
- ii. Offer in writing

V. Attorneys:

- i. Pre-suit and suits.
- ii. Defense and defense attorneys

VI. Obtaining a Release:

VII. Mediation/Alternative Dispute Resolution:

- i. Cause for mediation;
- ii. Choosing mediator; and
- iii. Know your opponent.