

Risk Management – CPLIC Claims Handling Guidelines

GENERAL LIABILITY CLAIMS

ACKNOWLEDGEMENT

The claim should be acknowledged as promptly as possible upon receipt so that the party who has submitted the claim is aware that the claim has been received. Acknowledgement can be one of various forms, including typed acknowledgements, emails, fax, etc.

INVESTIGATION

First of all, the information that was submitted with the claim should be thoroughly reviewed and an interpretation as to the issues in question should be determined. If there is insufficient information with the claim assignment, then the necessary parties should be contacted as promptly as possible and the additional information obtained. Contact with the insured should be within 24 hours and certainly no later than 48 hours. Contact is normally by telephone. If telephone contact is not possible, then a contact letter should be sent clearly indicating that telephone attempts or any other type of attempts have been made without success, and request that the party get back to the requesting party as soon as possible.

Once it has been determined what it is that is being alleged in the claim, a thorough investigation outline should be determined. This outline should include the parties that need to be contacted and the type of information to be obtained from each party. This information can be obtained by way of statements, preferably recorded, or in some cases, interviews with the appropriate party. There are times, because of the discovery in the court system, that we do not want formal statements of any kind in the file. Therefore, an interview with adjuster notes is deemed to be appropriate and often= times are less damaging in the event of litigation than formal statements.

All parties in the claim process should be interviewed or statementized as needed according to the investigation outlined. If the claim involves an incident at a particular location, the location should be inspected and photographed, and documented as to the extent possible.

Efforts should be undertaken to obtain copies of each and every document involved in the claim from all parties. Documents contain a great deal of information that can be very helpful, particularly indemnity (hold harmless agreements) etc. Care should be taken in reviewing all documents making certain as to the information and its bearing on the claim.

Photographs are always helpful and should be taken whenever possible. Photographs can either be good quality 35 MM or digital depending on the request of the client and the reporting format that has been agreed upon.

Partial investigations should be mentioned as sort of a disclaimer to the entire investigation process. Our clients dictate the scope of our work (more now than at any time in the past).

EXPERT/CONSULTANT

At some point in the claim process, it may be determined that an outside expert/consultant is necessary. Care should be exercised that the expert/consultant is thoroughly knowledgeable and trained in the area for which the need arises. The background or curriculum vitae of any outside expert/consultant should be

obtained and reviewed prior to the engagement of such expert or consultant. Client approval should be obtained prior to retaining outside experts.

REPORTING

It is my opinion that reporting should always be in a captioned format. I do not believe "form" reporting is a good idea in any type of claim. The report should be outlined by various captions that are pertinent and on target with the issues involved in the claim. The information contained within each of the captions should clearly outline the information that has been obtained. Personal comments should not be included in the reporting format unless specifically requested and should be under a separate caption so that it is not included in any of the factual information.

Initial report should be submitted within 10 to 15 days unless otherwise instructed. There are clients in the industry who use a 20 day or 30 day guideline for initial reports, but again this would vary with clients.

Once the initial report has been submitted follow-up reports should be guided by a timeline with a time period, such as 20 days, 30 days, or more frequent depending on information that is received and pertinent to the ongoing investigation of the file.

Short form reporting is permissible but should be limited to very minor claims or to very limited partial investigations where basically the report is being used more as a transmittal medium than a detailed report.

Long-term diaries are acceptable when dictated by the loss.

OPPOSING PARTIES

In the claim process with regard to general liability, there may be counsel on the part of the claimant or other parties involved in opposition to the insured. In all matters, correspondence should be professionally written, or done by way of telephone or other means. The information exchanged between parties should be professional in nature and limited to the necessary information. The letter should be formal doing away with any potential allegation of relations that may in fact not exist, but may be inferred by informal greetings, such as addressing the correspondence by the individual's first name. Remember, when claimants are represented, we should have no contact with them without the express written consent of the claimant's counsel.

EXPENSE CONTROL

In addition to the investigation of the file itself, there are other expenses which would include outside experts, defense attorneys, etc. Exercise should be taken to control expenses and the activities of the outside parties. Files should not be simply turned over to outside experts or attorneys carte blanche. Instructions should be given and regular reviews should be conducted to make certain that the guidelines are being followed.

COVERAGE ISSUES

While there may be some indication of a coverage issue at the time the claim is originally received, there may be other issues or a coverage issue not determined until the investigation is well underway. Regardless of what situation may exist, if indeed there is a coverage issue, the matter should be thoroughly discussed with the carrier and if deemed necessary by the parties in control, the issue may be sent to counsel for

interpretation of coverage. At all times, if there is a coverage issue, a non-waiver or reservation of rights should be rendered to the insured.

BILLING

Files should be billed on a regular basis. Clients most often prefer billing on a regular basis rather than letting bills run for extremely long periods of time and incurring large invoices. Whenever a bill is submitted, it should be a fully itemized bill, which would clearly outline for the payor the work that was done and the amount charged accordingly.

Coding of work completed is not a good idea and should be avoided.

FILE RETENTION

An agreement should be established with the client as to where the file will be sent for storage, and length of storage, upon completion of the investigation and resolution of the claim. Please see File Retention suggestions in this section.

EDITOR'S COMMENTS

Two items that are important to general liability claims are not addressed in the above guidelines.

Status: Many jurisdictions recognize that people who come on to your property come for different purposes, and, therefore, the duty you owe to them may be different. This is generally called "status". There are three statuses that people generally fall into:

1. *Trespasser* – This is a person you do not want on your property. Generally, the duty is to refrain from setting traps.
2. *Licensee* – This is a person you do not wish to exclude from your property, but don't necessarily invite on your property either. An example would be someone who goes into a grocery store to use the restroom, but has no intention of shopping. The duty, in general terms, is to warn of obvious hazards.
3. *Invitee* – This is a person you wish to have on your property so that you can transact business with them. The greatest duty is owed to them. You have a duty not only to warn of obvious hazards, but to be aware of, and to make the customer aware, of any hidden hazards.

The duties outlined above for the three categories are very general. You should check with your own jurisdiction to make sure how these are interpreted.

Constructive Notice: The other item I would like to comment on is constructive notice. This essentially means that a property owner is entitled to an opportunity to learn of hazards on his property. If he should have learned of the hazard, but did not, and therefore did not warn his customers of them, he could be liable.

Again, you should understand exactly how constructive notice is handled in your jurisdiction.