



RMG CONSULTING

Claims and Risk Management Executives

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RMG Consulting Litigation

RMG Consultants includes attorneys and senior claim professionals who have extensive experience in insurance claims related litigation of all types and from all perspectives. We recognize litigation management as an important and integral part of the overall technical claim management strategy that has the most potential for improving results and costs. We have defended third party lawsuits against insureds, first and third party coverage cases, claims where insured or claimant fraud is suspected and we have been plaintiffs in recovery and declaratory judgment actions. RMG Consulting also has substantial experience in primary and excess insurance including reinsurance disputes.

Our consultants have also participated in all kinds of voluntary; court ordered or contractually mandated alternate dispute resolution processes. We know what works best under various circumstances, and how to get optimum results.

Claims Managers often realize they have a need for an immediate implementation of an independent audit program to assess the performance of third party administrators (TPA's), claim units of managing general agents (MGA's) and others acting as agents of the company in the handling of claims which have reached the litigation stage. This audit program would initially be focused upon the compliance with the Litigation Management policies, practices and procedures as published by insurance carrier and which have become a part of the claim handler's responsibilities given the contractual relationship between the parties.

The development of a litigation strategy for resolution of every case is essential to move the matter toward an identified outcome in an economically effective manner. From the initial onset of litigation, the claims department and defense counsel should communicate and pursue those avenues that will move the matter toward a preferred resolution at the earliest possible opportunity.

Although the practice of litigation management must be a flexible process due to its nature, each lawsuit involves issues which need to be resolved and varying ways in which to achieve those results. A successful litigation management program must provide guidelines for the defense counsel and a roadmap for the claims professional.

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Some companies work, completely or in part, within a framework of having a *virtual* claim department which includes a degree of dependence upon outsourced claim professionals for the *front line* relationship between the defense counsel and the insured. In such a situation, the presence of a published litigation management program is only as effective as the implementation of same by the front line claim professional responsible for the day to day handling of the litigated claim.

To insure the adherence of the Litigation Management policies, practices and procedures by outsourced claim vendors, it is suggested that an audit process be developed, implemented and measured which will allow the evaluation of its success. The measurement will have two potential outcomes:

1. Areas of the Litigation Management program that can or should be modified and
2. Potential areas for immediate improvement that might increase the economic efficiency of the program and save allocated loss adjustment expenses (ALAE).

RMG recommends a two pronged review. Initially we hope to provide a methodology to enhance the current audit process to include a comprehensive Litigation Management component. Secondly, we recommend we undertake a sample review of the portfolio of claims. By trending and analyzing the results we should be in a position to determine which accounts, lines of business, and law firms have the highest concentration of legal bills both by number and dollar impact. The latter review will be designed to ascertain priorities and recommend where the fastest and most effective results can be achieved.

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AUDIT PROCESS (abbreviated)

1. Review the Litigation Management program as currently published.
2. Develop an audit format to accommodate the review of files being handled on behalf of the insurance carrier by TPA's, MGA's and others. The audit format will be developed in such a manner as to allow the compilation of results from a number of reviews for purposes of benchmarking current results and developing a method for tracking future compliance and to identify any areas that require process improvement.
3. Participate in reviews of claim files either independently or with representatives of the insurance carrier (preferred) as part of the normal audit / review process. The later alternative would allow RMG to assess litigation management practice of the outsourced claim professional(s) enhanced by the knowledge of the claim professional's relationship with the claim facility and their awareness of special issues that might impact full compliance to the procedure.
4. Participate in *wrap-up* sessions with the outsourced claim organization (either in person or via teleconference) providing feedback focused upon litigation management.
5. Generate audit reports for individual audits with a complimentary section for a *roll-up* of previous reviews for purpose of comparison and milestone improvement.
6. Provide a periodic report (e.g. semi-annual, annual or other to be determined) to assess the improvement in compliance; suggest potential areas for modification of the Litigation Management program or the audit process; and identify measurable savings achieved by program compliance or modifications.

AUDIT COMPONENTS (abbreviated)

Initial Receipt and Review of New LawsUIT

- o Date stamped or otherwise identified when first received by:
 - * Insured
 - * TPA / self-insured / carrier
 - * Agent / Broker / Other Intermediary
- o Determination of service dates for named insured(s) or any other insured named in the operative pleadings.
- o Logged into a system with calendar capabilities to insure time sensitive (e.g. answer dates) deadlines are identified and protected.
- o Detailed review of complaint at law to include dissection and identification of various counts, allegations within counts and requests / prayers for damages.

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Coverage Analysis

- o Initial Coverage analysis
- * Named defendants considered insured under policy?
- * Insuring agreement satisfied?
- * Allegations covered? All Covered? Some Covered?
- * Punitive Damages alleged? Covered by policy? Applicable law of state (e.g. covered if vicarious, against public policy)?
- * Non-specific demand or ad damnum seeking monetary damages? Excess letter required?
- * Potential to share defense costs with other insurers also providing coverage for the loss
- o Appropriate recommendations effected regarding coverage?
- o Preparation of draft reservation of rights / excess letter
- o Timely referral to carrier for coverage review and concurrence
- o Referral to counsel for coverage opinion
- o Timely transmittal of coverage position

Extension of Time to Answer or Otherwise Plead

- o Contact with the plaintiff's counsel by claims professional to reach agreement on an extension of time to answer or otherwise plead (in venues where feasible and/or allowed)
- o Confirmation of the extension in writing or filed with the Court (if appropriate)
- o Secure open-ended extensions where appropriate
- o Assigned defense counsel will also seek extensions using the above criteria if same is an appropriate litigation strategy that will assist in movement of the case toward timely closure.

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Referral of New File to Defense Counsel

o Early exchange of key data relative to a new case is vital. The referral to defense counsel by the claim professional requires:

- * The identification of key issues which need to be resolved
- * The identification and selection of the preferred resolution
- * The proposed strategy or course of action that will assist in the achievement of the preferred resolution
- * An estimate of the costs which will be incurred

o Assignment - The claims professional provides assigned defense counsel with the following:

- * Complete copy of the claim file
- * Copy of the summons and complaint
- * Instructions regarding which defendant(s) to for which to appear, answer, seek extensions or otherwise plead.
- * Overview of the allegations in the case
- * An outline of what legal services should be accomplished during the next 30-45 days
- * The claim professional's current assessment of the liability and case value
- * Critical issues that are known or identifiable
- * A request for an initial case report from defense counsel to be received within a certain timeframe (e.g. 30 - 45 days)
- * A request that for a Litigation Strategy to move the case toward the preferred resolution
- * A request for a Litigation Budget (e.g. Cradle to Grave, Phase I, etc.)
- * Enclosure of a copy of the current Billing Guidelines

The above are but only a few of the technical components that will be built into the review formats.

We also plan to include sections and fields that will provide the numerical or financial analysis to assist in the identification of areas of future focus or need for administrative change (e.g. TPA, law firm, etc.) As an example, we submit that high level items such as the length of litigation from defense counsel assignment to close (e.g. number of days) are revealing and serve to identify both claim professionals and defense attorneys focused upon the closure of litigated cases throughout the file life.

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INITIAL AREAS OF CONCENTRATION

While we are uncertain of the outcome of the exercise, we suspect that the *80 - 20 rule* or close to these figures will likely apply to the insurance carrier's litigation management concerns. It is conceivable that 20% of the accounts, TPAs and law firms are generating 80 % of the areas that require focus and potential adjustment. By reviewing the claim data in detail, we will be able to identify those accounts, TPAs and law firms that have both a high level of legal billings compared to outcomes of the files, and have higher average than their peers.

Please note this is not a file by file review, rather the benchmarking of results and an identification of trends. Based upon these reports, we will be able to develop a series of focused audits to go after the areas of highest concern.

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NEXT STEPS

Following the completion of the above steps, RMG can assist the insurance carrier to refine their billing guidelines, Litigation Management Guidelines for defense counsel and measurable procedures to facilitate the pro-active claims handling early in the life of the file.

Our goals would include:

- * Provide the handling claims professional with the tools to convey the essence of the Litigation Management program to the assigned defense counsel when the initial referral of a new lawsuit is consummated.
- * Allow the insurance carrier's claims department to have new tools to better measure the quality of the claim professionals handling their litigated files.
- * Provide the insurance carrier with the tools to assess the economic efficiency of various vendors (e.g. defense attorneys, experts, etc.) involved in the defense.
- * Establish the framework that will allow a *big picture* overview by which the carrier can make decisions (e.g. underwriting) that will positively impact the bottom line.

Consulting services include: Technical expertise in all kinds of claim related litigation.

- Case review and evaluation.
- Best strategies; litigation management.
- Fact development and investigation
- Case presentation. The story line and supporting cast and exhibits.
- Selection of council and performance evaluation.
- Trial and ADR monitoring.
- Settlement negotiations.
- Expert witness testimony.
- Coverage and liability.
- Claim handling.
- Good/bad faith.
- Industry practices and procedures.
- Alternate dispute resolution.

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- Arbitrations, as proponent or umpire.
- Appraisals - policy or other.
- Mediations. The most effective way of settling complex claims today.
- Protocols. Our consultants have substantial experience working with legal council to establish fair and affective ADR agreements that set the groundwork for a successful outcome.
- Qualitative attorney fee reviews that are protected from potential discovery.

- Jury research. Our consultants have participated in many mocktrials and focus groups with attorneys and psychologists specializing in this area.