

Maximizing Insurance Coverage: Efficient Defense Cost Management

By Robert Parrish

Published in the Fall 2023 ABA Mass Torts Journal (Volume 22, Issue 1)

When facing the possibility of mass tort litigation, insurance recovery might not be the first thing on one's mind. However, it is crucial to recognize that even the largest tort cases had humble beginnings. As litigation scales up, defense becomes increasingly complex and costly, often exceeding the ultimate settlement costs. In the face of mounting lawsuits, insurance can be a crucial lifeline for corporations, preventing potential existential crises. That's why it is vital to prioritize insurance considerations, even in the early stages of litigation. But what does this mean in practical terms? This article highlights the importance of considering insurance and retaining coverage counsel from the beginning when establishing a defense cost management system. By adopting a centralized system that effectively connects costs to individual cases, companies can enhance data transparency, increase the chances of successful insurance recovery, and minimize the time and money spent on negotiations or litigation.

From Claims-Made to Occurrence Based Policies, Defense Cost Management Matters

Effective management of defense costs plays a crucial role in insurance recovery for both occurrence and claims-made policies. In occurrence policies, properly managing and presenting defense cost data allows the insured to optimize coverage and avoid premature depletion of policy limits. By carefully allocating costs, the insured can demonstrate the reasonableness of expenses, significantly enhancing the likelihood of successful insurance recovery. Detailed and well-documented defense cost records facilitate efficient reimbursement, promote effective negotiations, and minimize coverage disputes. Similarly, in claims-made policies, effective cost management ensures the efficient utilization of policy limits. Comprehensive documentation of defense costs strengthens the insured's case during claim reporting, ultimately helping secure the maximum coverage available. Overall, proficient defense cost management is integral to controlling expenses and thereby maximizing coverage, streamlining negotiations, and providing essential documentation to ensure successful insurance recovery across all types of policies.

Billing Systems Don't Always Focus on the Requirements of Insurers

Defense claims management and billing systems serve as vital tools for prompt payment to defense counsel. However, these systems are primarily designed to interface with accounting systems, prioritizing efficient payment processing rather than catering to the specific demands of insurers. Focusing solely on the speed and efficiency of payment with purpose-built billing systems gives rise to several issues. First, firms operating on an alternative billing arrangement such as a fixed fee basis, an increasingly popular billing method, often submit single entry invoices to a single billing number. Consequently, there is not a roadmap to determine the costs associated with specific matters when reviewing the bill. While some costs may be general or applicable to multiple matters, allocating costs to specific matters is vital in insurance recovery.

Another concern with the inability to connect costs to specific line items is that it may lead insurers to argue that the billings include a certain percentage of non-covered costs. Additionally, as companies periodically change and update defense billing systems, there is a risk of data loss during transitions making it difficult, if not impossible, to retrieve cost information when the need arises.

What to Do? First, Look at Your Engagement Letters

An engagement letter is a contract that outlines the terms of legal representation between a law firm and its client. To allow for the ability to provide transparency to insurers, it is important for engagement letters to include provisions allowing clients to request shadow billings or "apportionment" documentation. Shadow billings provide a breakdown of the time spent on each legal matter, including the date, task, and a brief description. Alternatively, apportionments specify the percentage of work performed for each matter, accompanied by concise descriptions. While some legal counsel may be hesitant due to perceived burdens, the process of maintaining defense cost data can be simplified. By requiring shadow billings in engagement letters, clients have the option to access more detailed billing information, and it is recommended that they periodically incorporate this data into a consolidated defense database. These measures offer many benefits, including improved transparency and the ability to better manage defense costs.

Establish a System for Maintaining Defense Data

By creating a consolidated defense system that houses and manages claim-level data, significant advantages can be realized. One key benefit is the elimination of the burdensome task of retroactively locating and migrating relevant information. This streamlined approach not only saves time and resources, but also enables insurers to access available data more efficiently. Mandating the maintenance of case-level data within this system ensures transparency and facilitates informed decision-making. Furthermore, a consolidated repository enhances the insurance recovery process by providing insurers with accurate and readily accessible information, increasing their ability to evaluate costs and make informed determinations.

Conclusion

By prioritizing insurance considerations from the outset, corporations can safeguard their financial well-being. Adoption of a centralized system for defense cost management offers a multitude of benefits. Beyond transparency between clients and defense firms and enabling better cost management for corporations, centralized defense systems streamline the insurance recovery process for insurers. Through comprehensive defense data, stakeholders can make informed decisions, reduce financial burdens, and maximize coverage. It is crucial to address the limitations of billing systems and incorporate provisions into engagement letters, ensuring access to detailed billing information. Furthermore, the establishment of a consolidated repository for defense data optimizes the insurance recovery process, benefiting all parties involved in mass tort litigation. As the legal landscape continues to evolve, efficient defense cost management and

effective insurance recovery practices become increasingly vital, safeguarding the interests of corporations and insurers alike.

Identification: Robert Parrish is a Director at KCIC, a consulting firm that helps companies manage their liabilities and related insurance.