

## This Week's Feature

# Reporting Best Practices: Making Your Client Look Good

By Tracy Steele and Michael McGrory



Communication is paramount in any attorney–client relationship. The Rules of Professional Conduct require attorneys to keep their clients reasonably informed of devel-

opments and strategy in a matter, and to explain issues to the client in a manner that will allow the client to make informed decisions. This is a business development issue, too, since a lawyer who fails to communicate with clients sufficiently will soon find that he or she has no clients at all.

Insurance company clients are no different. In fact, most insurers have hard-and-fast reporting requirements, with specific issues that they want discussed at specific intervals in a case. Invariably, some counsel fall short in providing helpful reports. With that in mind, here are a few tips to consider when communicating with insurance company clients.

## Initial Budget

Insurers are required to set a reserve when a new claim comes in, and a significant component of that reserve is the anticipated cost of a defense. Thus, they require a budget on assignment of a matter to counsel. Insurers know that a budget is a forecast—an attorney's best guess at what a particular case will cost to defend through trial. But just because it is an estimate made at the beginning of a case does not mean that the reporting attorney should not put a great deal of thought into it. The lawyer should consider how many witnesses will have to be deposed, the type of travel that will be involved, whether the plaintiff's counsel will be reasonably agreeable or force every discovery issue into court, the need for experts, potential third-party claims, and whether a costly summary judgment motion will be appropriate, among other factors. Counsel should consider every factor in the case that is likely to result in fees or costs and include it in the budget. Only then can the client set an appropriate reserve and make informed decisions about strategy and settlement.

## Initial Damages Valuation

As with the budget, the insurer must know what the potential damages of a claim are for purposes of setting

an indemnity reserve. Again, this is a forecast, and myriad factors can play into a damages valuation. Certainly, it can be tricky to predict a case value before any discovery is conducted, but this problem can oftentimes be solved with a friendly phone call to the plaintiff's attorney asking for an informal description of injuries and damages. It can also be useful to perform a verdict and settlement search for similar cases, if that service is available in your jurisdiction. And while offering a range of values may be appropriate, it should be a helpful range (e.g., \$100,000–\$150,000, as opposed to \$100,000–\$750,000).

## Revised Budget and Damages Valuation

While attorneys representing insurance companies should strive to be as accurate as possible in their initial forecast with respect to the defense budget and case value, they should also report promptly when events occur that call those initial forecasts into question. As a golden rule, no client or insurer ever wants to be surprised. Things happen, though, and the attorney should quickly report evaluation-altering developments and explain why the new information was not previously discoverable or available. Perhaps the plaintiff underwent an additional surgery to repair injuries suffered in the accident, or perhaps the plaintiff even died from those injuries. These types of events may not have been foreseeable at the beginning of litigation, but they could significantly raise defense costs and potential damages. The initial budget and damages valuation are not etched in stone, and they can be revisited with the client. The attorney, though, must bear in mind that the client cannot increase reserves without a good reason. Thus, counsel should be prepared to explain how circumstances have changed and how those changes affect the budget and valuation.

## Settlement Recommendation

Every case has a settlement value. That is not to say that every case should be settled—it shouldn't. From a business perspective, though, a client must know what a reasonable settlement looks like so that the client can make an informed decision about how to proceed. Insurers are educated in the value of the case and the factors that go into that evaluation. In providing a settlement analysis to

the insurer, the attorney should offer not only the probable settlement value, but also what he or she believes the case will settle for, if those are different figures. Insurers reserve for probable value of a case, but they appreciate having all available settlement evaluations discussed before making that decision. In those cases where a reasonable settlement amount is eclipsed by the anticipated costs of the defense, the attorney should point this out to the insurer. This type of advice demonstrates that the attorney has the client's best interests at heart, and it can lead to a trusting and fruitful attorney-client relationship.

### Don't Fear the Phone

There is no disputing the convenience of communicating by email. In-depth legal analysis is best presented in writing, and it creates a record that can be referenced months or even years later. Claims personnel are required to document virtually all activity anyway. However, emails do not engender the back and forth and brainstorming that leads to true collaboration. So in addition to formal status reports, attorneys should pick up the phone and discuss developments and strategy with their clients. Any decisions made in a conversation can be documented with a brief, follow-up email. Actual conversations also have the added benefits of fostering trust and strengthening the attorney-client relationship.

### Make the Client's Life Easier

Insurance claims personnel have, minimally, dozens of open claims at any one time. Lengthy reports that reiterate previously reported factual minutiae and offer vague advice are not useful. Attorneys should take the time to create concise reports with cogent analysis and clear recommendations, not unlike a brief. (Bearing in mind, of course, that a status report should not be used as a vehicle to bill large portions of time; rather, it should be used to educate the insurer and insured on recent developments and how they affect the

litigation.) It is also helpful, when sending a status report by email, to include a quick note in the body of the email drawing the client's attention to key points in the report, such as a settlement demand or request to retain an expert. This way, the insurer is more certain to give a timely response.

If you make your client insurer look good, your client will appreciate it, and additional work will follow. Try to remember that all in-house legal representatives report to someone, whether it be a general counsel, risk manager, or claims adjuster. As their attorney, you should strive to make their internal processes easier and help them shine. Timely and comprehensive reports and evaluations are the foundation of this relationship. Further, make sure to take a victory lap if you obtain a successful result. When you shine, your client shines, so take that victory lap so that they can also receive internal accolades.

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