Strike
While the Iron Is Hot
Proper claims handling starts from day one

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The old proverb “strike while the iron is hot” alludes to the imagery of a blacksmith at his forge. If he delays in shaping the iron while it is hot and pliable, the metal soon cools and hardens, and the opportunity to bend it is lost.

The same can be said of a claim that is not properly handled. It all starts with notice. As soon as an insurer is notified of a claim the process begins: confirming coverage, gathering the facts, identifying the witnesses, taking an inventory of the scene of the incident and the surrounding circumstances. By aggressively pursuing the facts from the outset, the chance of resolving a case sooner, and at less cost, is exponentially increased. If the claim cannot be quickly resolved, it will be better prepared for handling by defense counsel.

Premises Liability

Premises liability cases are the bread and butter of most personal injury attorneys. Why? These cases are not particularly complex and if the damages are significant, counsel for the claimant stands to recover a sizeable contingency fee. Just because premises cases are generally simpler than a products liability or labor law claim does not mean they should be given short shrift. Because they are so prevalent and because serious injuries can generate huge jury verdicts, it is important that they be handled well, both from a claims handling and general defense perspective.
After confirming coverage, a claims handler should undertake a thorough investigation of the facts. In most cases, he or she can do this personally but in some cases it may be necessary to retain an investigator to do so. If the loss involves a death or catastrophic injuries, defense counsel should be retained. Such large losses are more likely to result in litigation and having defense counsel involved during the investigation can prove immensely beneficial down the road.

Regardless of who does the investigation, the basic questions are the same: who, what, when, where, why and how. It is important to identify the individuals with knowledge of not only the incident (eye witnesses) but those familiar with facts and circumstances before the incident and who might shed light on issues concerning both liability and damages. If, for example, the loss involves an allegedly defective sidewalk, stairway or other walking surface, you need to determine who maintained and/or was responsible for maintaining that area before the loss. If the insured contracted a third party to repair or maintain that area before the accident then you might be able to shift liability to that vendor via an indemnification tender. Obviously, any such contract documents or other electronic and/or written materials should be gathered and analyzed.

Many retail establishments generate an accident/injury report if a loss occurs on premises and the event is reported in a timely manner. You should ask your insured if they have such documentation and, if so, obtain a copy. The absence of such documentation may be helpful in establishing that the accident was not reported and therefore may not have occurred on the premises.

Some retail establishments have manuals that discuss policies and procedures for inspection and maintenance of the premises. You should obtain copies of such documentation to determine if the insured acted in conformity with these policies and procedures. If not, claimant's counsel will surely cite them in arguing negligence on the part of the insured.

Obtaining written or recorded statements of the insured and/or insured witnesses can be helpful, but witnesses sometimes recall the incident differently and you may elect to forgo formal statements for this reason. Obtaining statements from the claimant and any non-insured witnesses is generally a good idea because it lets you know what information they have and commits them to a story if and when litigation ensues. Full contact information (home address, email address, cell phone number, home phone number, date of birth, social security number) should be obtained for any witnesses, the insured and the insured's employees as these people may live elsewhere when suit is filed.

The importance of quality photographs of the scene and the allegedly defective condition as it existed at the time of the loss cannot be overstated. Very often, claimant's counsel will forward close up photographs that make the condition look horrible. Most things do not look flattering from only a few inches away. Taking numerous high quality scene photographs from the perspective of the claimant and any eyewitnesses will provide a more balanced analysis of liability. Remember, the law does not require that property owners maintain their premises in "perfect" or "pretty" condition, only that the premises be "reasonably safe."

Automobile Accident

Like premises liability cases, automobile cases are generally quite simple to prosecute and offer personal injury attorneys the opportunity to recover substantial contingency fees. For this reason, they are frequently brought and must be thoroughly investigated.

If police responded to the scene following the accident there should be a police report. This must be obtained as it often contains a wealth of useful information (e.g., weather, skid marks, citations issued). Likewise, the operators of vehicles involved should have completed accident reports (MV-104). Again, these reports usually contain useful information and should be secured.

Obtaining quality photographs of the scene as it existed at the time of the accident, taken from the perspective of the claimant, your insured and any other witnesses is important. Similarly, photographs of the vehicles involved in the accident and any trees, guardrails or other property damaged should be gathered.

If the loss involves death or catastrophic injuries, defense counsel should be retained. It may also be necessary to promptly engage an accident reconstruction expert to work with counsel and visit the scene, take computerized measurements and photographs, and extract "black box" data from vehicles.

Personal Injury Damages

Authorizations should be requested to obtain copies of the claimant's medical, employment and other such records. Careful review and analysis of these records may reveal the existence of prior or subsequent accidents and injuries. It may also identify other
medical providers from whom records should be obtained. If you can establish that the claimant had prior or subsequent injuries, you may be able to attack the causal nexus between the claimant's alleged injuries and the subject accident. If you discover that there was a preexisting medical condition that was merely aggravated, the claim is worth less than a newly sustained injury.

There is a wealth of information available on the internet that may assist you in assessing the claimant's background and activities post loss. Social media sites such as Facebook and Twitter may contain posts and photographs that contradict the claimant's allegations of significant injury and disability. While this information can be researched by defense counsel after suit is filed, doing so shortly after you receive the claim is more likely to unearth helpful information. The reason for this is simple, many personal injury attorneys will advise their clients to delete or otherwise hide such posts before suit is filed.

**Property Damage**

Property damage claims typically require that the insured submit a proof of loss and provide receipts for any personal property that was damaged or destroyed. Before getting to that point, however, there are many steps the claims handler can take to investigate the loss.

In the case of a fire, you should promptly gather the fire department's investigative report, photographs and any other materials they have. Retention of a cause and origin investigator is also advised, to visit the scene, take photographs and preserve evidence as appropriate. If the cause of a fire is determined to be electrical in nature, you may need to retain an electrical engineer. He or she should be able to differentiate between fire-induced damage to electrical components and arcing or other such indicia of an electrical-caused fire. Similar expertise may be needed to evaluate the design and performance characteristics of a fire alarm and/or suppression system. All of this is done to fully explore the possibility of subrogation after the claim is paid.

If arson is suspected, you need to further investigate the insured's financial status before the fire. An examination under oath is often the starting point for this endeavor. Counsel should be engaged to conduct this examination and should request that the insured produce at the examination all pertinent documentation (e.g., bank and tax records, telephone records and prior advertisements to sell the subject property).

In the case of water losses occasioned by malfunctioning appliances in the home, an expert may be needed to inspect and opine regarding the cause of loss. As with an electrical appliance, water-based appliances must be preserved if you wish to subrogate against the manufacturer, installer or maintenance professional.

Unresolved disputes with insureds and their public adjusters regarding the value of their claims can and should be resolved with the appraisal process outlined in most insurance policies.

**Conclusion**

Time is not our friend. Memories fade, scenes change and documents and other evidence disappears. When a claim is handled properly from day one, the probability of an early resolution is greatly increased. Of course, there will always be those claims that cannot be quickly resolved, despite the claims professional’s best efforts. In those cases, his or her vigilance will assist defense counsel immeasurably. Like the blacksmith, the claims handler must strike while the iron is hot.

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