Five Things

Candid Insight Into the Attorney-Client Professional Relationship

By Murielle Arn and Jeffrey Stupp

As a litigation/claims professional, have you ever wanted to be brutally honest with the attorney you are working with on a file, but were concerned it would not be taken as constructive criticism? As an attorney, have you ever felt the professional you are working with has put you in a difficult situation? We have. Here are

the five things we wish the party on the other side of this relationship knew. Taken to heart, following these "best practices" can lead to a much more effective relationship between the attorney and the claims professional.

Five things I wish my lawyer knew — the litigation/claims professional perspective:

Yes, I know you graduated from law school

I understand you want to share your knowledge and use all those interesting words acquired during those challenging law school years, but there's no need to impress me with a $5 word when a $1 word will do. If you really want to amaze me, please use clear, concise language and limit the legalese.

Status reports and updates

I need the Reader's Digest condensed version, bullet points would be nice, please get to the crux of the matter quickly. I need you to keep it short and to the point. If you need action on my part, please highlight that prominently.

We're going to fight on this until we prevail!

We all get caught up in the excitement of the battle, however sometimes it does not make economic sense to fight it all the way. Sometimes I wish we could, but that's not reality. A win is getting a favorable outcome without breaking the bank on expenses.

Stick to the assignment

I appreciate you want to cover all the bases and look under every rock, but that's not always the assignment. Like you, my workload is large. Please don't add to it unnecessarily with an overzealous approach to a matter.

I'm trying to impress my manager same as you are

My manager says, "Watch your costs." Yours probably asks for more billable hours. Let's find a happy medium so we can win or at least settle claims in a timely and economical manner. We want to start a productive and enjoyable business relationship, but would prefer to keep our interactions sporadic.

Five things I wish the litigation/claims professional knew about my job — the attorney perspective:

I can't predict the percentage of success on a case taken to trial

I'm sure it would be very helpful for you to know the percentage reflecting our odds of prevailing in a case; it would be helpful for me too. Unfortunately, both judges and juries are very unpredictable. You could have the best facts possible, but a jury could hate your client. On the other hand, you could have terrible facts, but the judge unknowingly hates opposing counsel. I can report on the strengths and weaknesses of a given case, but I do not have a crystal ball. Please forgive me for my inability to prognosticate and relieve me of the burden of putting an arbitrary percentage on our chances for success.

Reserves are an internal matter

I have been asked on numerous occasions to assist in setting the reserves on a particular file. Unfortunately, I am an attorney, not an accountant. While I can provide an estimated budget for fees and costs on a given matter as well as a range for potential liability, and while those are elements utilized in setting a reserve, there are insurance and accounting elements to setting a reserve that dictate this function must be handled in-house.

I am not trying to take you to the cleaners, I am trying to resolve a case

The hardest line to walk in the tripartite relationship between insurer-attorney-client relates to fees and costs. I understand you have pressure to keep costs down; I equally understand my client and your insured expects an adequate defense. If I am doing no more than what is necessary to resolve the case, it puts both of us in a very awkward and potentially dangerous position to lecture me on fees and costs. The client should never be left with the impression their defense is being compromised in favor of the insurance company's bottom line.

Take a step back and take off the rose-colored glasses

All too often, claims professionals I interact with on a given case unreasonably believe their insured has done nothing wrong, that liability is impossible, and the plaintiff is a liar. While your loyalty and enthusiasm for our defense is to be admired, litigation requires objectivity. Sometimes plaintiffs are truthful, and sometimes your insured is liable. Analyzing the facts and applicable law on an objective basis and as early as possible will lead to more cost-effective litigation, and more often than not, will enhance the tripartite relationship because everyone is more likely to be on the same page.

Direct your ire at the one wearing the robe (but not to their face!)

I know it can be frustrating when a court order requires your attendance at a pre-trial or hearing, especially when you do not believe your insured has any liability. It is equally frustrating when I move the court to excuse your attendance and the motion is denied. But don't shoot the messenger, I have taken the heat for a judge inconveniencing the claims professional numerous times, even though this anger is clearly misdirected. It adds unnecessary tension to the attorney-claims professional relationship when counsel is blamed for something that is out of their hands. LM

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