

INSURANCE LITIGATION STRATEGIES

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Brian V. Francis, ARM

Discovery and Case Reserves

As an indicator of case value, the establishment and modification of individual case (claim) reserves has a role in insurance litigation. Request for reserve information is most often found in litigation involving allegations of breach of contract or bad faith. The reserve provides a credible source of information when seeking to determine how the insurance carrier evaluated the value of the case in dispute.

A reserve is an amount of money set aside by the insurance company to pay a claim. It is established at the time of loss and periodically adjusted after the initial investigation. The reserve can be set by the adjuster, supervisor, regional office or home office claim staff. While the amount of money (reserve) may be increased or decreased depending on the claim severity, the goal of the reserve is to accurately reflect the probable ultimate cost of the claim in order that it may be recorded as a liability on the insurer's balance sheet.

Reserves are established in accordance with the line of insurance coverage being called upon to satisfy damages. In the case of an automobile accident, reserves would be established to pay for the automobile physical damage, the medical needs of the insured, and a liability reserve to reflect the liability of the insured's negligence if she is determined to be the tortfeasor. One category of reserve is particularly indicative of the claim's administrator's strategy, the Allocated Loss Adjustment Expense reserve. Contained within this reserve are expenses associated with managing and investigating the claim itself. Reserves will reflect defense costs, the cost of independent medical examinations, expert witnesses and other legal and investigatory services such as surveillance.

Accurate reserving (the estimation of the claim's probable ultimate cost) is important to the financial health of an insurance company and receives a significant amount of scrutiny from the claims and accounting departments. Insurance company accounting practices are governed by statutory accounting rules, and reserving or liability recognition, is a part of that process. Within the context of reserving a specific claim, reserving procedure is most often found in the insurers claim management manual.

Courts generally look at the admissibility of reserves from two perspectives. One is that a reserve is prepared in anticipation of litigation, and therefore, is protected from discovery by the work-product privilege. Some courts hold the second perspective; that being that reserves are prepared in the normal course of business and are therefore discoverable. We subscribe to this second perspective, in as much as reserves are generally assigned to all claims, even those with minimal amounts of severity. The practice of establishing reserves on all claims, whether or not they are litigated, is prescribed by statutory insurance accounting practices.

Discovery of insurance company reserve information can be critical in insurance litigation and, as a process performed on almost all claims, should be available via the discovery process.