



Coverage Verification and the Claims File

How To Carefully Create and Manage Claims Screens

By Kevin Quinley, CPCU, ARM, AIC

Sooner or later, all adjusters will find themselves examining claims that pose coverage issues. These controversies may pertain to the date of loss, additional insureds, applicability of exclusions, intentional acts, breach of policy conditions, late notice, non-coverage for certain counts, or punitive damages.

It is considered a best practice for adjusters to assess coverage as one of the first steps or *the* first step in handling any claim. If there is no coverage, then liability and damages may be moot. If coverage is lacking, then that is game, set, and match. “Game over!” Do not pass GO. Do not collect \$200—or rather anything from the policy proceeds. Supervisors and texts urge fledgling adjusters to first verify coverage as a threshold issue. This is sound advice.

Having decided that a claim poses a coverage issue, however, new decision points loom. Claims adjusters may deny coverage

outright. Alternatively, the adjuster may ask the policyholder to sign a non-waiver agreement. More typically, he or she will send the insured a reservation of rights letter. At this stage, there is a genuine coverage issue involving the claims file.

A corollary decision point is this: Should the claims department now split the staffing so that one adjuster handles the liability claim while a separate staffer handles coverage? This is the “screen,” or bifurcation of the claim file. Failure to adroitly manage this process can mire adjusters, insurers, or independent providers of claims services in bad-faith quicksand.

Challenges in Setting Screens

In basketball, setting a screen often means risking a collision, and the same applies to claims handling. Here are some potential challenges:

- When should the adjuster or the claims unit bifurcate—that is, split coverage—from liability?
- Once a screen is in place, what communications are legit between the liability and coverage adjusters? Is the screen ostensibly an airtight, hermetically sealed chamber with no passage between the two areas?
- Do all coverage questions merit a screen between the liability adjuster and the coverage adjuster?
- Is there a need to create a “vertical” screen within the claim department? How high up the organizational chart must an insurer build a screen to insulate itself from bad-faith claims?
- When does the obligation to maintain a screen between claims handling and cov-

erage handling end? When does a screen come down?

Here we pose more questions than we can definitively answer in the space confines of this article. A sound starting point is for the adjuster to seek the advice of seasoned insurance-coverage counsel at the first whiff of a coverage question that might involve the need for a screen.

Avoiding Conflicts of Interest

Let's review the purpose of the so-called screen. Many also call the screen a "Chinese Wall" or a firewall. Screens address the problem of insurer conflict of interest that may disadvantage a policyholder. Without a screen, a liability adjuster could "feed" investigative tidbits to the coverage adjuster that would boost the latter's ability to contest or deny coverage.

Conversely, without a screen, the coverage adjuster could share information with the claim-handling adjuster that would help the latter "steer" claim defense toward defeating only the covered counts or allegations. The net effect might be to leave the only remaining counts as ones outside of the policy's coverage orbit, enhancing

FOUR TIPS ON MANAGING CLAIMS SCREENS



Provide screen training and reinforcement. Periodically remind claim staff of the need to "split" claim files when coverage questions arise.



Make it easy. Ensure it is streamlined for adjusters to seek the advice of seasoned coverage counsel—either in-house or outside—to guide them on handling screens.



Err on the side of caution. It is better to create a screen and not need it than to forgo building one and learn too late that it was crucial. Therefore, when in doubt, screen.



Create electronic prompts. For example, when an adjuster enters claims data and indicates YES for the coverage question field, an automatic prompt pops up suggesting that the adjuster split the claim file.

the carrier's ability to say, "Sayonara." Either way, the insured suffers.

Thus, to avoid either scenario, screens insulate the two aspects of claim-handling, so that never the twain shall meet between handling the liability claim and handling the coverage aspect of the file.

Here are the thorny issues for adjusters. What follows is not legal advice, as I am not an attorney. The following sug-

gestions do not necessarily represent the standard of care. Deviating from them may not equate to bad faith. These are bend-over-backwards steps to avoid any taint of conflict of interest and to bullet-proof the claim file from bad-faith allegations. View these as rhetorical questions with accompanying practice tips:

► **How soon should a screen be erected?** If this is done too soon, then it wastes

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time and resources. If you do it too late, then an attorney could say you acted in bad faith by allowing a conflict of interest in handling the claims file.

Suggestion: Err on the side of caution and do it sooner rather than later; better late than never, though.

► **What kind of communication does a screen prohibit?** Does a screen bar all communications or just those which could inure to a policyholder's disadvantage? Does a "gag order" prevent Joe (who handles the liability file) and Bonnie (who handles the coverage file) from talking at all? Can they discuss any aspect of the file? If the two adjusters discuss the case status or the progress of, say, settlement negotiations, then does that breach the screen? Screens are porous; they allow air—and sound waves—to pass through. Even the Great Wall of China extends only so high up into the air.

Suggestion: Consider discussions about that specific claim file off-limits to avoid any whiff of collusion.

► **Do all coverage questions require a screen?** Perhaps not. Let's say, for instance, a naïve or clueless insured files

an auto claim with the homeowner's carrier. Or suppose a retailer submits what is clearly a workers' compensation loss to its general liability insurer. In both cases, the adjusters view coverage (or no coverage) as a slam dunk. Is the adjuster—under penalty of a bad-faith lawsuit—to split the file in two? Do these scenarios differ from one where, say, a question arises as to whether the insured's late notice materially breached the policy conditions?

Suggestion: Unless the coverage issue is a black-and-white no-brainer, split the file.

► **How high up the org chart does a screen go?** Let's say Suzie handles a fire loss claim and there is a coverage question. The company splits or bifurcates the claim file, with Suzie handling the claim and Brad handling the coverage, but both Suzie and Brad report to the same claims manager. Is that legit? Is there still a conflict-of-interest risk by having both adjusters report to the same boss? Does this taint or compromise the screen? Must Brad and Suzie report to different bosses now? What if there is only one overriding claim "boss" left?

How high up the org chart—vertically—must a screen extend?

Suggestion: Have the two adjusters report to different supervisors for that claim file only. No need to turn the org chart upside down.

► **When does the screen come down?** If you take a case to trial and it results in a verdict, then can the claims-handling adjuster compare notes with the coverage adjuster, or is it folly to do so? Must you wait until the claim settles to lower the screen?

Suggestion: Keep the screen in place until the claim file is closed.

Exercising care in creating and maintaining screens will pay dividends. Pains-taking efforts here protect the insured. Moreover, a strong and well-thought-out claims screen can become an effective shield against bad-faith claims. ♥

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