Best Practices for Responding To Time Limit Demands

1. Before Receipt of Settlement Demand
   - Do not wait for demand to start investigating liability and damages.
   - Proactively request insured's authorization to disclose policy limits.
   - If reasonable possibility that damages will exceed policy limits, proactively obtain declaration from insured regarding insurance and course and scope.
   - If reasonable possibility that damages will exceed policy limits, advise insured, in writing, of risk and of insured’s right to retain personal counsel.
   - Once there is enough information to tender policy limits, do it – do not wait for a settlement demand!

2. Receipt of Settlement Demand
   - If demand is mailed, date stamp it and attach it to postmarked envelope.
   - If demand is faxed, retain fax cover page.
   - Note receipt of demand in claim log.
   - Immediately review demand to identify any deadline for acceptance.
   - Adopt protocol to ensure that demand is immediately reviewed by appropriate claim handler, even where claim not yet assigned or where assigned claim handler absent (e.g., sick or on vacation).
3. Reviewing and Analyzing Settlement Demand

- Does demand contain deadline for acceptance?
- Does demand contain conditions?
  - ✔ certified copy of declarations page?
  - ✔ declaration that insured has no other insurance?
  - ✔ declaration that insured not acting in course and scope of employment?
  - ✔ declaration disclosing insured’s assets?
  - ✔ delivery of settlement check before deadline?

- If demand contains conditions:
  - ✔ outline proposed plan for satisfying each condition.
  - ✔ if information or documentation needed from insured, contact insured (both by phone and in writing) immediately – do not wait until last minute!
  - ✔ explain to insured case may not settle if conditions not met by deadline – confirm in writing.
  - ✔ if unable to reach insured, follow up in writing, as well as documenting claim file.
  - ✔ if insured refuses to provide requested information/documentation, confirm insured’s position in writing.

- If demand unclear or ambiguous, make written request for clarification.
  - ✔ seek clarification as soon as possible; do not wait until deadline.
  - ✔ when seeking clarification, confirm demand not being rejected.

- Confirm release consistent with terms of demand.
  - ✔ State that release is subject to claimant’s review and approval.
  - ✔ State that release may be reasonably modified as long as insured remains fully protected.

- If additional time needed for responding to demand, make written request for reasonable extension – explain what further information/investigation needed to complete evaluation, and why.
  - ✔ do not allow deadline to expire before asking for extension.
  - ✔ do not wait until deadline to ask for extension.
  - ✔ do not require receipt of more information than needed to establish claim is worth more than policy limits.

- Advise insureds of all policy limits demands and responses.
  - ✔ advise promptly – don’t risk argument that insured not given enough time to protect interests.
  - ✔ if more than one insured has potential liability, advise all insureds.

For More Information Contact:

Peter Klee
Partner
619.338.6624
pklee@sheppardmullin.com

Theona Zhordania
Partner
213.617.5546
tzhordania@sheppardmullin.com