



WE'RE GOING TO MAKE IT AFTER ALL

By: Tyler Volm and Nicholas Novak

As a new attorney starting out in the world of insurance litigation, there are many procedural and professional development skills that must be honed in addition to mastering the substantive law. This article will explore common hurdles faced by newer attorneys in this area.

Learning the Law

Learning the substantive area of your insurance practice will take some time. No matter what you studied in law school or whether you clerked in this practice area during law school, there will be a learning curve when you are practicing. Be sure to take the time at the outset to learn the basics including *prima facie* elements, exhaustion requirements, and allocation of liability amongst multiple parties. This may seem like the last thing a new attorney wants to consider after having spent the summer studying for the bar, but it will lay an important foundation for future success. Spend some time with the Federal Rules of Civil Procedure, your state's rules of civil procedure, and any local rules. Although you may think you are busy now, it is likely that your time will become even scarcer as you move forward in your career, so take the time now to set a solid foundation (at a time when your firm is likely more understanding of attending seminars to help you learn the law). Spending the time up front will also help newer attorneys assess the merits cases early in the process, such as learning what questions to ask for as part of an initial evaluation, determining the inflection points of cases, and which cases are appropriate for summary judgment.

Learning the Insurance Process

Once you have the substantive basics under your belt, the next step is learning the procedural process when litigating insured claims. For plaintiff's attorneys, there may be notice requirements or other procedural hurdles that must be met before a claim can proceed. For insurance counsel, newer attorneys must understand tendering requirements as well as how to properly identify your client in the case and maintain thorough

representation of that client amidst demands of the insurer. Additionally, defense counsel must also learn to litigate within the parameters set by the insurance company, including complying with their litigation guidelines (which often include regular reporting and billing rules). Read any litigation guidelines carefully, and ask questions of your supervisors. The early stages of a case can be critical, and tasks such as case valuation are often a difficult process for newer attorneys. If you are in a firm, talk with senior attorneys about this process. If you are on your own, find a senior attorney in your area and take them to lunch. You might be surprised to learn that even more senior attorneys can have a difficult time valuing certain cases. Similarly, learning the settlement negotiation process can be challenging, and senior attorneys are a valuable resources in this regard as well. As one senior attorney said, you should settle the bad cases and try the good ones, but determining which cases are good and which ones are bad takes many years of litigation experience. Do not be afraid to ask someone with more experience for their perspective.

Learning Client Management Skills

From a plaintiff's side perspective, newer attorneys must balance thorough representation of a client that has likely experienced some traumatic event, without overselling the case to the client and setting up unreasonable expectations. Defense counsel must keep their client informed of the status of the litigation, the potential for early settlement or ADR, and must also keep the client apprised of the anticipated cost of defense. After all, you can put a ton of time into a case, but ultimately if the bill does not get paid the lights may not stay on. Plaintiff's side attorneys often have to evaluate a contingent case quickly, and with only limited facts, before deciding whether to take on the representation, which will involve substantial time commitments.

Learning Professional Development Skills

Professional development and marketing opportunities often take a backseat for newer lawyers who are doing their best to learn their practice area, manage client and partner expectations, and not forget about their life beyond

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the office. Committee memberships with national, state, or local bar organizations or nonprofits are a great way to grow your professional network, and also provide a sounding board for newer lawyers who can meet other lawyers in similar stages of their careers and exchange notes and advice. While we work in a contentious industry, these organizations can add a human element to the practice and may enhance relationships, even with opposing counsel, which increases satisfaction of your practice. After all, those best able to understand what a new lawyer is going through are other lawyers. But being involved in bar organizations also can lead to better and faster results for the clients. Organizational skills learned through officer positions can also help develop the legal skillset. Participation in professional development and marketing opportunities also provide ripe ground for establishing a relationship with a mentor, an invaluable asset to a new attorney.

Putting It All Together

With the numerous and seemingly never-ending demands on your time, sometimes the hardest thing to do is find time to just think. But taking the time early in the case to analyze the issues and develop a litigation plan – reaching out to colleagues and supervisors, as well – will help ease the inevitable stressful periods of the litigation. Importantly, take the time to celebrate your victories, but do not ignore your failures. Your missteps may provide lessons that you could not learn any other way. There is a very steep learning curve for all new attorneys, but deliberate steps early in your career can lead to increased satisfaction with the practice and better results for an increasing client base. ⚖️

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