

Manager/Supervisor Risk Management

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A twice weekly e-mail training for YCPARMIA members

TOPIC: CIVIL LITIGATION – ATTORNEYS

It is probably necessary to include some neutral comments about attorneys as part of the broader discussion on civil litigation.

About 40% of YCPARMIA's liability claims have an attorney representing the claimant. The claimant's attorney (plaintiff's after suit is filed) generally is compensated by taking a percentage, generally 30-40%, of their client's settlement or judgment with claimant also responsible for litigation costs. When a claim is denied, and there is no settlement the claimant's attorney does not get paid. The involvement of an attorney is not, in and of itself, significant. They often take the case based on what their client tells them. Hopefully they will then do their own investigation to determine how much of the story they are really getting, and adapt to reality as discovery proceeds. The best way for the entity to avoid litigation costs is to do a thorough investigation, and share the results with the other side. If the attorney realizes that their case is weak then their contingency fee agreement gives them an incentive to drop the matter. Conversely, a plaintiff's attorney who has too much time or money invested in a claim often has a motivation to roll the dice in the hope of recapturing some of their investment.

Plaintiff's attorneys develop reputations. Some are excellent, and provide responsive and professional service to their clients; we recognize that having these attorneys on a new claim aggravates our potential exposure. Other attorneys are little more than a legal mill where they take a number of very weak cases in the hope that we will compromise the claim to avoid litigation costs. This practice has become more prevalent as courts push mediation where every case suddenly has a settlement value -- the magic point is where each side is equally unhappy. YCPARMIA normally refuses to mediate.

Until suit is filed, all interaction with the claimant's attorney is conducted by YCPARMIA in-house staff. When the claimant serves their lawsuit YCPARMIA hires the defense attorney. We assign defense to individual attorneys that work for firms that specialize in public entity defense, and do not use the entity's general counsel, or the firms that they work for. Since YCPARMIA is managing the litigation ongoing and timely communication from our defense attorney is essential, and a major consideration in choosing counsel. Our defense attorneys are paid on a time and expense basis – unlike the plaintiff's attorney, they get paid whether they win or lose.

It is essential that defense counsel interacts well with the entity's staff to develop the sources needed to evaluate and defend the lawsuits. Attorneys work under court imposed deadlines, and can lose sight of the reality that our entity's employee's normal duties do not include working with defense counsel – it is something that they have to do in addition to meeting their normal responsibilities. Giving the employees adequate time, information, and the reasons for requested information goes a long way toward obtaining the cooperation and assistance that is absolutely essential.

Next topic: Law Enforcement Liability