

Front Page Story

Pre-Lawsuit Demand Letter To Adjuster Can Speed Settlement

Tactic Must Be Used Properly To Be Effective

Sending a properly constructed pre-lawsuit demand letter to an insurance adjuster is often the best and most efficient way to settle a case, practitioners tell Lawyers Weekly.

Southfield attorney Lawrence E. Gursten, who specializes in first and third party auto cases, said that his firm makes extensive use of pre-lawsuit demand letters.

"Demand letters do work," Gursten stated. "But they only work when they are used properly."

Gursten said that words alone are not enough anymore.

"You've got to be able to use demonstrative evidence to show the injury," he explained.

Adrian lawyer Robert E. Jameson agreed.

"The demand letter is your first crack at settling the case," Jameson said. "And if you don't do it right, you'll get stung."

Southfield attorney Michael J. Butler also said that a properly constructed demand letter is an effective tool, but cautioned against sending such a letter in every case.

"[A demand letter] should not be done merely as a tool to achieve quick turnover of files," Butler said. "Pre-suit resolution should not be a substitute for properly working-up a file."

Practitioners agreed that attorneys considering a demand letter should:

determine the particular insurance company's position on settling cases;

- understand the extent of the client's injuries;
- determine the defendant's liability coverage;
- include demonstrative evidence; and
- use a "best case scenario" for your client on all disputed issues.

Know Your Insurance Company

Gursten said that sending a demand letter in every case is not warranted.

"Some insurance companies have a hard-line policy position and will reject all soft-tissue and other claims," Gursten noted. "When dealing with those companies, a demand letter is useless. We just file suit."

Novi attorney Matt Savich agreed.

"The insurance company is definitely a big factor," Savich explained. "Certain insurance companies just won't deal."

Butler added that attorneys should not send a demand letter until they have a "good grasp" on the extent of their client's injuries.

"Doctors will often try to treat a patient conservatively for a period of time before referring him or her for more extensive diagnostic tests," Butler explained. "These tests may show that your client has a serious, objectively confirmed problem."

Therefore, Butler said, "don't be anxious to settle what you might think is a soft-tissue case."

Best Case Scenario

Butler explained that, before he makes a demand, he always determines the defendant's liability coverage.

"Do not settle without written confirmation of the defendant's coverage," Butler advised. "This requirement is not only for the client's benefit, but also for the attorney's protection."

Frequently, Butler continued, "settlement negotiations are based on the defendant's exposure."

Savich agreed.

"One of the first things I do in these cases is determine the defendant's coverage," he said. "You don't want to sell your client, or yourself, short."

Butler also cautioned against presenting your "bottom-line" figure in a demand letter.

"It should not be a line drawn in the sand, in most cases," he said. "Put your best foot forward, know your case, and know your client's damages."

Butler advised using a "best case scenario" for your client on all disputed issues.

"Give your client the benefit of the doubt," he said.

Jameson echoed Butler's observations.

"You never want to devalue your client's case," Jameson observed.

Special Tools

According to Gursten, demonstrative evidence is the key to a successful demand letter.

"You need more than just a letter," he explained.

Gursten listed several "special things that really work" when making a demand.

"We use a computer program called ADAM which contains thousands of computerized anatomical illustrations," Gursten explained. "We blow the illustrations up, colorize them, and use them to show closed-head injuries, fractures, and so forth."

Gursten said that he also hires companies that will prepare demonstrative medical evidence such as X-rays and MRIs.

"For example, we have colorized an MRI to better show a ruptured disk," he said. "We want the insurance company to see what we will have at trial."

In "catastrophic" cases involving "large policy limits," Gursten advised using "day-in-the-life" videos.

"We make a video of the client going through an entire day," he said. "They cost thousands of dollars to make, but they are effective in showing the insurance company what it's facing."

Gursten also recommended sending statements from lay witnesses regarding the client's condition before and after the accident.

"The statement indicates that [the client] is not the same person as he or she was before the accident," he explained.

Finally, Gursten suggested mentioning the possibility of a cause of action on behalf of the client's children, if applicable.

"Keep in mind that children have a cause of action," he said. "This can help get the case settled."

November 2, 1998