

## **EARLY CLAIMS RESOLUTION STRATEGIES**

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### **Early Investigation**

- involving lawyer, adjuster, engineer, photographer, videographer
- create privilege immediately
- recording of evidence
  - vehicle debris, gouge marks, road conditions, signage and road markings
- preserving documents
  - maintenance records, inspection records, log books, emails
- downloading vehicle data
- inspection of involved vehicles
- statements from our driver, passengers, supervisor
- completion of internal incident reports
- complete police investigation
  - officers' notes
  - driver statements
  - witness statements
  - measurements
  - field notes
  - photographs, video
  - accident reconstruction report
  - breathalyzer recordings
  - toxicology reports

## **Plaintiff Productions**

- decoded OHIP summary
  - goes back 7 years
- family doctor's records from at least 3 years pre-accident
- ambulance call report(s)
- hospital records
- treating physicians' records
- rehabilitation records
- prescription printout from at least 3 years pre-accident
- accident benefits file
- employment/business records
- income tax returns
  - personal/corporate
- property damage documents
  - including photographs

## Investigation and Surveillance

- particularly if available information is minimal
- productions slow in coming
- surveillance
  - which days and times are the best
    - to and from appointments
    - birthday, anniversary
- interview of neighbours and co-workers
- litigation search
- Facebook/MySpace

## Experts

- paper reviews
- verbal opinions
- full assessment
- type
  - engineering
    - accident reconstruction
    - seatbelt usage
    - biochemical
    - origin and cause
    - environmental
    - coefficient of friction
  - toxicologist
  - climatologist
  - orthopaedics
  - physiatry
  - neurology
  - neuropsychology
  - neuro-ophthalmology
  - psychiatry
  - psychology
  - future care
  - functional ability evaluation
  - vocational assessment
  - labour market survey
  - accountant
  - economist
  - actuary

## **Early Settlement Meeting**

- before examinations for discovery
- consider having plaintiff present
- set table for a resolution
- send message that early resolution is desirable
- particularly in catastrophic cases where liability is not in issue or minimal on part of plaintiff
- create timetable
- identify productions and expert reports to be obtained by both sides
- co-ordinate assessment dates
- use of structure quotations
- involve accident benefit insurer or LTD carrier

## Offer to Settle

- if liability position strong, dismissal without costs before the examinations for discovery
  - will insist on costs if forced to attend
  
- monetary offer based on a reasonable assessment of the claim
  - lawyer required to present it to client
  - exposes plaintiff to significant costs
  - reduces plaintiff's recovery of costs, and that of lawyer

## Motion for Summary Judgment

- changes to *Rules* increase chances for success
- judge permitted to assess credibility and weigh the evidence
- judge can require oral evidence to be presented
- if trial deemed necessary, judge can narrow the issues and specify which facts are not in dispute
- timing
  - before or after discoveries

## Mediation

- no need to wait for an action to be commenced
- consider limiting to half a day
- involve accident benefit and disability insurers
- plaintiff made to realize that early compensation is a reality
- if action commenced, changes to *Rules* require mediation within 180 days of the first defence



## **Bifurcation of Trial**

- must be on consent of all parties
- useful if decision on liability will lead to a settlement
- reduces cost exposure to both sides where the trial of the damages will take considerable time
- allows for an earlier trial date
- plaintiff counsel may resist if case weak on liability but strong on damages
  - does not want to lose sympathy factor

## **Advance Payment**

- stops pre-judgment interest
- is seen to fund litigation for the plaintiff
- may create goodwill if injuries and damages significant
- increased chance for a resolution at a settlement meeting or mediation

## Appraisal of Property Claims

- avoid storage charges from accruing
- early clean-up and salvage
- consider pre-existing damage
- was damage caused by recurrence of same deficiency
- ACV vs replacement cost
- 2 year limitation period for residential and commercial losses against a third party
- 1 year limitation period for claims against own insurer