The District Court No-Fault Trial: The Adjuster Is The Key

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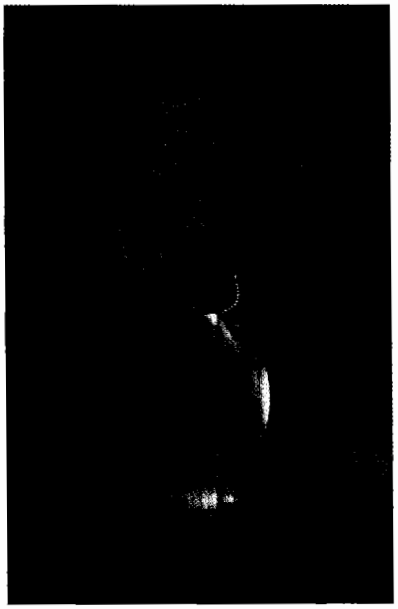
As medical and wage loss expense claims continue to rise for even the most minor car accidents, post-termination claims are growing as well. In order to get the full amount of medicals considered along with any wage loss or replacement services claims, Plaintiffs increasingly will be filing with the district court for recovery of claims over the $10,000 no-fault arbitration jurisdictional limit. And with no-fault attorney's fees an incentive in a tough economy, the incidence of district court no-fault filings is bound to increase.

In the past, district court no-fault cases have been relatively few and far between. The few I did each year always settled at mediation. And, given how cost-effective and plaintiff-friendly the AAA forum has been, plaintiffs had no reason to move. However, with the recent push to have more defense lawyers on the panel actually bearing fruit and the economic downturn, plaintiffs are willing to risk more to get more.

Because we can expect to see more and more district court no-fault cases, it makes sense for us to have a plan for handling them from start to finish.

However, experience in handling these cases is uncommon. After arbitrating over 500 no-fault cases, I just tried my first no-fault case this March, and neither the Ramsey County judge nor opposing counsel (who had done defense work for years) had ever tried one. I didn't realize how rare they were until a month or so before trial when I began to draft my special verdict, jury instructions and jury orientation statement. I didn't have forms that I could just edit and, as trial approached, I was concerned about educating the jury about no-fault. So I developed tailored no-fault jury instructions and a verdict form unique to the no-fault



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issue. I put together opening and closing presentations that emphasized the specifics of our no-fault issues and my questioning of witnesses tracked those themes.

In this economy, while the healthcare debate was raging, the special risks of a first party case involving something called no-fault insurance concerned me. Under the circumstances it seemed particularly important to personalize the insurance company, explain and justify the decision making process, and bring the adjuster front and center.

Where an insurance company is trying to justify a cutoff of benefits to someone who has "paid premiums" it is particularly important to give the company a human face. It was equally important to explain how the insurance company's decisions were made, validate that process and establish that it produced a just result. In that respect, I was happy to be able to focus on a file that was worked up meticulously and to have the adjuster sitting beside me. The fact that my client had a face and that a real person had done exemplary work on this case, more than anything else, led to a defense verdict. The adjuster's presence at trial is invaluable. Most of you have years and years of experience judging people and the claims they make. That experience is a tremendous asset during jury selection, when planning opening and closing arguments, and especially when preparing to examine witnesses. The adjuster ought to be a partner in the trial process from start to finish.

We all know that we adjust no-fault claims based on the law, but the jury doesn't necessarily know that. Throughout the trial, we emphasized what the law in Minnesota is and how the decisions that we made were completely consistent with that law. In that way, we were able to show that the company was the kind of "good citizen" that the jury would want to agree with. This point was made again and again throughout the trial from the jury orientation statement through closing argument. By the end, we were viewed as a company composed of real people making correct decisions.

In focusing on how the adjuster worked up the file, we put the medical records front and center. We demonstrated that the adjuster had studied the records in order to make her coverage decisions to demonstrate that, if the jury did exactly the same thing, they would see the case the way we did. Throughout the trial, the judge and opposing counsel made light remarks about the three large binders of medical records I provided to the jury, telling me "They'll never read these." However, they were wrong. The jury did exactly what the adjuster and our expert had done: they pored over every record, looked at all the facts, and decided that the cutoff was proper. They denied a $20,000 wage loss claim and a $22,000 medical claim. In the end, they believed in the adjuster and her investigation and that won the day for my client. ■