

## 10 Tips for Avoiding Bad Faith Failure to Settle Claims

Below are 10 tips for avoiding bad faith failure to settle claims in matters where exposure potentially may exceed policy limits. These are general guidelines. Their application may vary from case to case, from state to state, and depending on the number of claimants.

### 1 Generally, it is a best practice to evaluate claims early and proceed as follows:

- Tender policy limits the moment you receive information showing the reasonable value of the claim exceeds the policy limits.
- If evaluation shows the claim is worth less than policy limits, document the basis for the evaluation.
- If you have not evaluated the claim, document why you have not or cannot do so.

### 2 If the insurer receives a settlement demand that it may or will reject:

- Advise and copy the insured
- Ensure defense counsel advises the insured
- Diary the response deadline

### 3 Before responding to such a demand:

- Determine what information is needed to complete the investigation.
- Determine whether insurer has or reasonably can obtain such information to complete investigation before the response deadline.
- If not, request (in writing) extension to response deadline, specifying the additional information needed and why a reasonable extension is required.

### 4 Complete investigation:

- Confirm defense counsel has sufficient information to evaluate claim value and make recommendation.
- Document any missing information; take steps to obtain it (see also Step 2 above)
- Confirm experts' completion of assignments
- Ask insured if additional information is necessary

### 5 Identify and evaluate options:

- Obtain defense counsel's recommendation based on:
  - Relevant law and evidence
  - types of damages available
  - best, worst, probable scenarios
- Solicit insured's input and questions
- Obtain defense counsel's analysis of and responses to insured's input/questions

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## Develop preliminary decision:

- Calculate “technical” settlement value (probable damages x chances of recovery)
- Evaluate and reach decision based on reports of defense counsel, staff, and experts, and communications with insured
- If there are multiple claimants/insureds, consult applicable law regarding measures that must be taken before exhausting limits

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## Communicate (in writing) preliminary decision to insured:

- Disclose factors considered, analysis, and conclusions
- Request input from insured including identification of:
  - erroneous assumptions
  - omitted information
  - incorrect calculations
  - problems with basis for decision
- If insured agrees, and to the extent appropriate, explain preliminary decision to claimant’s counsel in order to solicit information or considerations that have been omitted

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## Develop final decision:

- Obtain updated report of counsel addressing input from insured or claimant
- Integrate latest report into decision-making process (e.g., modify and/or seek additional information as appropriate).
- Exercise reasonable judgment in reaching final settlement decision based on totality of circumstances
- Document decision/all factors considered.

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## Communicate (in writing) final decision to insured

- Advise insured of risk of an excess judgment or potential exposure as applicable
- Explain how decision may affect insured’s rights
- Apprise insured that he/she may secure private counsel to represent his/her interests

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## Respond to any subsequent communication from insured

Contact Dentons US LLP if you would like an in-house training session regarding the implementation of this model and/or the principles upon which it is based.

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