



## The Role of Claims Adjuster and Defense Counsel in Human Service Litigation

**W**hen a human service agency is sued, litigation is usually resolved through settlement. Who pays the bill? Very often, it's an insurance company. Claims that involve human service agencies vary widely. Whether dealing with a simple workplace accident, serious injuries and fatalities, or allegations of negligence or professional malpractice, an insurance company's priority is to provide swift, effective resolution of every claim. The company evaluates which claims should be legally defended and which warrant early settlement. The person making these decisions will be an insurance company claims adjuster. Seemingly anonymous, claims adjusters are ultimately responsible for deciding how much money, if any, will be paid out in settlement.

### The Claims Adjuster

The insurance claim process is complicated and involves different areas of expertise. Generally, an adjuster must develop a clear understanding of the policyholder's enterprise. In the event of a claim, the adjuster promptly investigates and forms an assessment of potential liability, damage, and financial exposure.

To be an effective adjuster requires a detailed knowledge of the insurance industry and an ability to view complex issues in terms of their dollar value. Simultaneously, adjusters appreciate that their company wants to maintain a positive, ongoing long-term interaction with their insured agencies, reinsurers, attorneys, accountants, risk managers, and a number of other professionals, both inside and outside of government.



Far from dry, being an insurance adjuster in the human service area can be intriguing. Successful claims adjusters are quick learners, adaptable, collaborative, and have a knack for blending good listening skills with the ability to make tough, informed, analytical decisions. They understand that the need for exceptional customer service has never been greater—but remember—the adjuster works for the insurance company, not the policyholder.

Human service agencies are often required to carry certain levels and kinds of insurance. These requirements can arise out of state law, contractual obligations with funding sources, or responsibilities to partner

organizations or individuals. Because these organizations tend to have unique and diverse coverage needs, insurance for human service corporations is considered a specialty area. Only select insurance companies offer products and services designed to meet the specific needs of agencies dealing with child abuse, adult and child day care, residential treatment, housing and shelter, foster care, and so on. Of course, every risk and exposure cannot be underwritten. To maintain profitability, insurance companies select only certain risks. This allows the company to offer price stability while remaining competitive.

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## Working with Defense Counsel

Attorneys who work with claims representatives in this context bear a similar burden when handling the defense of these claims. Because these specialized claims often involve complex and unique issues, the lawyers handling them must develop the ability to translate uncommon issues into strategies and arguments that resonate with jurors and judges in a wide range of jurisdictions. How can attorneys who represent human service agencies work best with insurance adjusters?

“I know it sounds elementary, but the number one thing an attorney can do, regardless of the type of claim, is return the adjuster’s call,” says Coti Voegtler, a Cleveland, Ohio–based claim specialist with the Philadelphia Insurance Companies. Voegtler explains that it can be difficult to maintain a good relationship with an attorney who is unavailable. Specific to claims involving human service agencies, Voegtler believes it is extremely important “to recognize what these claims mean to the insured’s reputation, their licensing, and the morale of their employees.” Claims involving human service agencies require a certain sensitivity that may not be required when handling other types of claims.

Jacqueline Holeman, a senior claims specialist based in the Seattle, WA area, agrees that “good communication between the defense attorney, the claims representative, and the insured human service organization is critical.” As a senior claims specialist who also works for the Philadelphia Insurance Companies, she, too, values timely reporting of significant developments and involving the insured client in strategy discussions. Another crucial aspect of handling these specialized types of claims is “a good understanding of the insured client’s human service organization and operations.” She believes it is important to avoid focusing solely on the litigation and instead keep the “big picture” in mind, which helps to maximize client


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confidence and approach the discovery process more collaboratively.

The traditional tripartite relationship between the insurance company, the insured, and the defense counsel is unique. Because defense counsels play a multi-faceted role in this relationship, they bear a special responsibility to communicate effectively with both the claims representative and the insured. As an advocate, the defense counsel is constantly working to maintain the court’s and opponent’s focus on the most favorable defense arguments and facts. At the same time, he or she is responsible for objectively evaluating the strengths and weaknesses of the defense as well as the plaintiff’s arguments and facts. It is crucial that the defense counsel clearly identify, for both the insurer and the insured, where the line falls between advocacy and objectivity. An objective assessment usually involves identifying all the pertinent facts and arguments and providing a risk–benefit analysis. However, with regard to advocacy, it is important that the insurer and the insured understand that the message will often be tailored to the audience. Thus, the arguments an opponent may find persuasive can differ from those a judge may find persuasive, which can further differ from those that may persuade a jury. To make sound decisions moving forward, the insurers and the

insured must be apprised of the objectively quantifiable risks and benefits of pursuing the diverse and varied options that most litigation presents. Understanding the difference between advocacy and objectivity is critical in making well-reasoned choices.

Nowhere is effective communication more important than at the trial preparation stage. Stress, anxiety, a relentless focus on effective advocacy, and just the sheer workload of trial preparation can impair the defense counsel’s ability to effectively communicate with the insured’s decision-makers as well as with the claims representative. These burdens can be more daunting when the insured and insurer disagree on issues such as resolution or trial strategy. The defense counsel therefore bears a special responsibility to maintain control and organization over what can be vast amounts of information: presentation materials, electronic devices, logistics of bringing witnesses in, preparing witnesses to testify, preparing cross-examinations, compiling documents, as well as many more trial-related tasks. As the point person for coordination of the trial, maintaining objectivity with the insurer and insured is critical, even when defense counsel is immersed in crafting a jury presentation focused almost solely on advocacy. The defense counsel must be perpetually available and prepared to engage in comprehensive discussions with both the insured and the insurer on virtually every aspect of the case, ranging from trial strategy to resolution.

The claims process can be complicated. A good defense counsel must avoid any legal missteps while balancing the needs of the policyholder and the insurance company. All in all, this is not an easy assignment. 

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