



The Carnival of Risk

Liability Claim Reserving & Case Evaluation

Presented By:

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1

WHAT IS RESERVING?


Budgeting money for future claim payments

Indemnity

- Bodily Injuries
- Property Damage
- Attorneys' Fees (plaintiff)
- Remediation



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2

WHAT IS RESERVING?

Budgeting money for future claim payments

Expense

- Damage Appraisals
- Records Retrieval
- Attorneys' Fees (defense)
- Depositions
- Expert Fees



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3

WHY IS RESERVING IMPORTANT?

There are several stakeholders in the reserving picture

Self-Insured Public Entities

- Significantly affects annual budget
- High percentage of reserved dollars must be available for claim payments
- Reserves must continually be monitored and evaluated with claims team
- Can affect overall budget of entity, causing cuts in other programs
- Causes big cash flow problems if suddenly increased prior to large payment
- Helps Risk Managers make their case for increased budget and focus on risk management efforts



4

WHY IS RESERVING IMPORTANT?

There are several stakeholders in the reserving picture

Risk Pool Members

- Affects budget for excess pool members
- Requires adequate deposits in trust or other designated account
- Should be set by pool, not member
- Drives Annual Contribution amount to risk pool
- Allows for more accurate data analysis of losses
- Clearly defines areas of concern
- Helps Risk Managers make case for increased budget and focus on risk management efforts



5

WHY IS RESERVING IMPORTANT?

There are several stakeholders in the reserving picture

Excess and Re-Insurers

- Critical for proper analysis of risk
- Accuracy is essential when markets are quoting premium
 - If too low, premium will be too low for actual losses
 - If too high, you are overpaying for coverage
 - Either is not good for long term relationship
- Should have yearly dialogue with carriers about loss history and outlook
- Provide "Large Loss Reports" on your biggest cases
- Engage with carrier claims people when handling larger cases
- In addition to reserves, provide overview of Risk Management efforts



6

WHY IS RESERVING IMPORTANT?

There are several stakeholders in the reserving picture

Risk Pool Finance Division

- Essential part of analysis for yearly budgeting
- If under reserved, members will not be pay proper premium for their actual loss profile
- Could give rise to need for retrospective calculation or assessment
 - Membership generally not welcoming of that
- Promotes solid financial stability for the pool in all aspects
- Claim payments drive the majority of the budget
 - Determines what other resources can be provided to members
 - Training, Risk Management, etc.
- Minimizes risk in investing pool funds
- Allows actuaries to make informed, accurate conclusions on health of program.

7

WHY IS RESERVING IMPORTANT?

There are several stakeholders in the reserving picture

Risk Pool Administration

- Allows for earlier detection of types of losses that are problematic
- Allows for potential earlier detection of under performing members
- Drives Risk Management initiatives (eg. Sidewalk displacements, ADA)
- Increases awareness of seriousness of loss at all levels of the organization
- Can cause evaluation of Memorandum of Coverage for specific losses

8

BUILDING A LOSS RESERVE PHILOSOPHY

- More an art, than a science
- Experience-based
- Settlement Value vs. Potential Adverse Verdict
- Fixed Damages vs. a Range
 - Property Damage vs. Injury Claims
- Taking a realistic approach
- Re-thinking and admitting when you are wrong

9

BUILDING A LOSS RESERVE PHILOSOPHY

- Who will set the reserves and have authority to adjust them?**
 - Public Agency, Third Party Administrators (TPA), or a Pool
 - Escalation hierarchy
- Don't let politics cloud your judgment**
 - Potential pitfalls with carrier relations
- How will you audit the reserves?**
 - Diary system
 - Litigation management plans
 - Large loss meetings



10

BUILDING A LOSS RESERVE PHILOSOPHY


- Triggers for adjustments**
 - New information
 - When settlement talks fail
 - When the case appears headed for trial
- Clear file documentation**
- Communication with defense counsel**
 - Regular updates as things happen



11

A SAMPLE LOSS RESERVE PHILOSOPHY

- Initially reserve to settlement value.
- If the damages are fixed, reserve to that amount.
 - Example:** Pothole damage to a vehicle.
- If the damages are **not** fixed, reserve to the top of the range.
 - Example:** Sidewalk trip and fall with injuries.
- Reserve will be reviewed on diary in conjunction with a litigation management plan every 90 days.
- If the case does not resolve at mediation and appears headed for trial, will adjust the reserve to the amount of a reasonable adverse verdict.
- If the case resolves for less than reserve, the reserve will be lowered.



12

BUILDING AN EXPENSE RESERVE PHILOSOPHY

- Defense counsel budgets
 - Required or not?
 - What's in it?
 - When must it be submitted?
- Exhaustion of the expense reserve
- Revisions to the budget
- Taking down the expense reserve at the time of settlement



13

A SAMPLE EXPENSE RESERVE PHILOSOPHY

- An expense reserve cannot be set without a budget from defense counsel.
- The budget will include all costs of defense through mediation.
- The reserve will be set to the amount of the budget.
- If the reserve is exhausted prior to mediation, the reserve will be adjusted to an amount to get the case through mediation.
- If the case does not resolve at mediation, a revised budget through trial will be requested from defense counsel.
- The reserve will be adjusted to the revised budget amount.



14

CASE EVALUATION: LITIGATION

- Venue**
- State vs. Federal Court
 - Geographic region
- Judge**
- Past personal/firm experience
 - Analytics
- Jury Pool**
- Conservative vs. Liberal
 - Affluent vs. less affluent
- Jury Verdict Search**



15

CASE EVALUATION: LITIGATION

- Plaintiff's attorney
- Plaintiff(s)
- Defendants/Co-Defendants
- Type of case
 - Personal Injury
 - Employment
 - Civil Rights Violation
 - Excessive Force
 - Wrongful Death



16

CASE EVALUATION: LITIGATION

- Deposition testimony**
- Plaintiff(s)
 - Third party witnesses
 - Client(s)
 - Co-Defendants

- Insurance**
- Client
 - Others

Joint and several liability issues (Prop. 51)



17

CASE EVALUATION: LITIGATION

Type and nature of injures

Type and nature of recoverable damages

- Economic damages
 - Past and future medical specials
 - Past and future loss of earning
- Non-economic damages
 - Past and future pain and suffering
- Attorney's fees
- Litigation costs/Expert fees
- Interest
- Punitive Damages



18

CASE EVALUATION: LITIGATION

Actual amount of recoverable damages

- Howell damages
- Liens vs. insurance
- Reasonable value of services

Non-tangibles

- Skeletons in the closet
- Long and short-term impacts
- Appetite for litigation
- Time away from "real" job



19

THANK YOU

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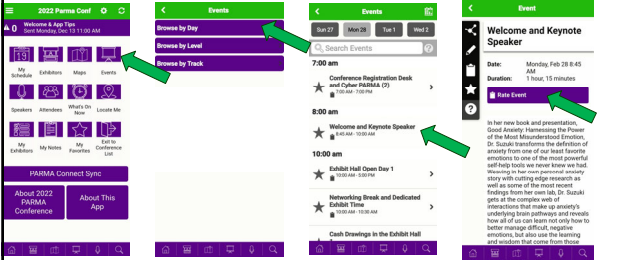
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20

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21
