

Property and casualty insurers tackle indemnity in litigated claims

How property and casualty insurers are tackling financial leakage and social inflation in casualty and litigated claims to improve outcomes



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In an increasingly litigious environment, insurers are spending more than \$23 billion¹ a year on defense and cost containment within the claims process and \$27,000 in indemnity per injured party in third-party bodily injury claims, an 8.3% increase since 2023 and 38% increase since 2020.² To mitigate soaring property and casualty (P&C) claims costs — and avoid hiking premiums to pay for them — carriers are looking for solutions to drive these costs down.

How can insurers achieve improved litigation outcomes and avoid litigation altogether?

¹ "Defense costs and cost containment expenses of insurance companies in the United States from 2013 to 2022," Statista, <https://www.statista.com/statistics/217211/tota-us-defense-costs-and-cost-containment-expenses>, November 2024.

² "Crash Course 2024: A Year of Shifting Gears: How the Auto Claims and Repair Industry Adapted to Economic Strain and Evolving Technology in 2024," CCC Information Services, 2024.

Four root causes of financial leakage

Each year, the EY P&C Claims Transformation practice performs a large number of claims quality assessments. Based on the team's latest assessments, **indemnity and leakage are rising, with leakage representing approximately 7% to 14% of carriers' total spend.**

Our team has found the following four root causes at the claims level are minimizing the value of insurers' defense costs, inflating leakage and impacting litigation effectiveness.



1. Evaluation

Assessment of general damages was not accurate.

Insurers often struggle to evaluate the justified general damages owed due to the ambiguity involved with determining them, leading to miscalculations that can affect settlement negotiations and litigation outcomes. A more thoroughly investigated claim – with a clear understanding of the case facts, claimant's profile, extent of injuries and knowledge of the venue – is essential to handle claims fairly and provide appropriate compensation to claimants.



2. Prevention

Insurers missed opportunities to settle prior to or upon filing of the lawsuit.

This misstep can result in unnecessary litigation, increased costs and strained relationships with policyholders. By adopting a proactive approach to settlement discussions, insurers can mitigate risks and reduce the likelihood of escalating disputes, ultimately benefiting the involved parties.

3. Investigation

Injury causation and liability were not properly established.

A thorough investigation is crucial for establishing injury causation and liability in claims litigation. When insurers fail to conduct comprehensive investigations, they leave gaps in understanding the circumstances surrounding a claim. Without a clear establishment of causation and liability, insurers may find themselves at a disadvantage prior to and during litigation, potentially missing out on key strengths for more accurate evaluations and counterpoints during negotiations.

4. Litigation

The litigation strategy was not appropriate based on the claim facts, and litigation expenses were not properly managed.

The effectiveness of a litigation strategy is paramount to the success of a claim. Unfortunately, many insurers adopt litigation strategies that are not appropriate based on the specific facts of the claim. Additionally, litigation expenses are often not managed effectively, leading to unnecessary costs that can erode the value of potential settlements. A more strategic approach to litigation, coupled with diligent expense management, is necessary to enhance outcomes and protect the interests of both insurers and policyholders.

Claims management diagnostic assessments can help executives review their own evaluation, prevention, investigation and litigation efforts. With that information, they can glean insights about their company's challenges and opportunities and start to make changes to minimize leakage.

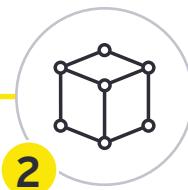
Where should insurers invest to mitigate financial leakage and improve claims outcomes?

Carriers have recently focused their investments in **six key areas** to achieve more successful claims outcomes and reduce financial leakage. These include:



1 More strategic approaches to prevent litigation

Insurance carriers are increasingly focusing on early resolution efforts that aim to address claims before they escalate into costly legal battles. By fostering a culture that prioritizes closing claims over a process-oriented approach, insurers can streamline operations and reduce litigation costs. This includes considering defense costs during negotiations for more aggressive pre-litigation settlements on appropriate cases.



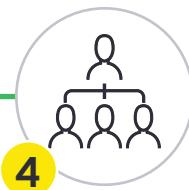
2 Modernizing the segmentation model

Insurers are pulling back from escalating claims to a new adjuster when a suit is filed toward more exposure ownership. Additionally, in the current data-rich environment, insurers are moving away from traditional segmentation points (financial exposure, attorney representation, etc.) toward considering the specific characteristics of each case to align the most complex claims with the resources best equipped to effectively resolve them.



3 Quality assurance and performance management

Carriers are placing increased emphasis on aligning measures of success with their overall P&C business objectives, focusing on efficiency, outcomes, productivity and experiences. This includes refreshed metrics and a new quality assurance approach centered on open claims, indemnity outcomes, negotiation and evaluation accuracy vs. process adherence.



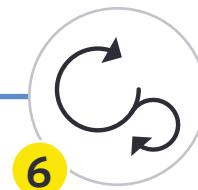
4 Reimagining the role of the supervisor

Carriers are reimagining the claims management supervisor role to foster a more strategic and proactive approach. Supervisors are now expected to engage in open-file practices, providing real-time feedback before adverse outcomes occur. This proactive stance enables targeted training and quality assurance so that claims are handled effectively from the outset. There's also a growing emphasis on establishing formal feedback processes for pre-litigation adjusters on escalated claims so they can review the eventual outcome of litigation on claims they initially managed.



5 Defense counsel sourcing, assignment and incentivization

The sourcing, assignment and incentivization of defense counsel are critical components of the claims litigation process. Insurers are developing incentive structures based on outcomes to align the right firm with the right case. This strategic approach not only enhances the quality of legal representation but also streamlines the overall litigation process. Additionally, the internal counsel operating model is being refined to support these efforts so in-house teams are equipped to manage complex cases effectively.



6 Optimizing the P&C claims workflow

Insurers are re-emphasizing a culture of critical thinking to enhance decision-making processes instead of relying on case evaluation technology that can increase avoidable litigation. The balance between voice-to-voice interactions and digital communications is being carefully considered because both play a role in effective claims management. Furthermore, settling claims prior to defense counsel assignment is becoming more formalized and a priority, allowing insurers to resolve disputes more efficiently and reduce overall litigation costs.



Insurance industry outlook

While the insurance industry is experiencing more adversarial societal views, especially with younger generations, and more extensive regulation, **we see positive developments on the horizon**, including:

Shifting risk tolerance

Traditionally risk-averse carriers will evolve to a more risk-tolerant strategy, starting with the willingness to take more cases through trial.

Litigation prevention

Carriers will shift their primary emphasis from traditional early resolution to litigation prevention.

Industry collaboration

Carrier-to-carrier collaboration will increase across competitors to drive better P&C results, starting with more sophisticated analytics pertaining to plaintiff attorney profiles.

Evolving talent strategy

The industry will overhaul its traditional P&C talent management strategy with more aggressive compensation and recruiting for claims specialists and staff counsel.



Why EY claims transformation for litigation management?

Increasing claims payouts are not out of insurers' hands. The EY claims transformation practice has engaged with dozens of top P&C insurers realize improvements in mitigating leakage and overall effectiveness.

The EY team uses a diagnostic approach to conduct a rapid operational benchmarking assessment and a claim file quality review in parallel, while providing comprehensive leading-practice industry insights along the way.

Through comprehensive casualty and litigated claims management assessments, we identify root causes of financial leakage at the claims file level and maturity gaps at the operational level in P&C claims and litigation, enabling carriers to pinpoint opportunities to enhance their efficiency and effectiveness. We combine our findings with industry insights about where insurers are investing to help clients reach more successful outcomes.

Our dedicated team comprises experienced technical claims professionals who have worked as front-line complex claims professionals, supervisors, regional managers and in home office leadership roles. We provide a strategic blend of operational, data and technology skills, with P&C casualty and litigated claim industry experience from global and North American insurers, third-party administrators and self-insureds, including engagement experience with seven of the top 10 US P&C carriers.

Our team's industry experience, combined with working with clients on casualty and litigated claims assessments over the years, allows us to maintain a recent and diverse repository of leading practices. Through our experience and accelerators, we can prioritize opportunities and recommendations through the following deliverables:

- Baseline assessment and maturity benchmarking against industry-leading practices of peer insurers
- File quality and leakage assessment, including root causes of adverse performance
- Performance management strategy, KPIs and a quality assurance framework to evaluate staff and internal and external counsel
- Implementation roadmap outlining quick wins, strategic initiatives and proofs of concept

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