

MAXIMIZING YOUR CHANCES OF SUCCESSFULLY
TENDERING A CLAIM TO YOUR INSURANCE COMPANY

Valorem's [Mark Sayre](#) spent most of the 25 years he spent in practice before founding Valorem representing insurance companies in coverage issues and handling claims. He has seen the insurance industry from the inside, and that knowledge can help you increase your chance of successfully tendering a claim to your insurers.

It's not a matter of simply tendering the claim to the right insurer. What you do and how you do it will influence the outcome, from the insurance company accepting the tender to a flat denial of coverage.

Q. We receive a variety of claims. How do we determine whether or not to tender the claim to an insurer?

A. Tender all claims to all insurers except where it is obvious that the claim isn't covered.

It is common that attorneys suing a company will think about that company's insurance coverage when preparing the claim. They do this because they believe it will be easier to settle a case if they can access insurance company money. As a result, it is common to find "buried treasure" in a complaint when it comes to potential insurance coverage.

The initial decision is whether to accept a claim or send it to a very expensive lawyer to decide whether the claim is covered. This critical initial decision is made by a claims adjuster who has almost no legal training at all. He or she will accept the tender or seek a coverage opinion from the insurance company's lawyer based solely on a review of your tender letter and a quick review of their policy, which frequently is incomprehensible. *In other words, if you write the tender letter in such a way as to make it appear a virtual certainty that the claim is covered, the adjuster reading it may simply agree, assign you counsel and proceed to litigate or settle it on your behalf.* Even if the adjuster's decision is wrong and the insurance company later learns that the claim is not covered, generally, they cannot take it back.

Q. So how do I write the tender letter?

A. Very carefully, in a way that makes it look like the claim is covered.

Life is about appearances and accepted ways of doing things. Consider this analogy: in baseball, when a shortstop fields a ground ball and tosses the ball to the second baseman, the rules require the second baseman to touch second base or tag the runner before throwing the ball to the first baseman to complete a double play. For decades, second basemen have not been touching second base or tagging the runner before throwing to first, but are still getting a double play. Why? Because it looks like he tagged the bag and it is now an accepted way of the world.

Here are some guidelines that will make it appear to the claims adjuster that you “touched second base” and have a covered claim:

- *Don't send a single letter to all insurers tendering the claim.* Certainly there is economy in doing so, but if you do, it's a clear sign to each insurer that you haven't a clue who to tender this claim to and whether the claim is even covered. Instead, send a separate letter to each insurer. Furthermore, tailor the letter to the type of insurance to which you are tendering.
- *Don't lawyer up.* Don't have your general counsel or outside counsel sign the tender letter. If you have a lawyer write the letter, insure that it doesn't read like the lawyer wrote it. The adjuster receiving a tender letter, obviously written by a lawyer, will think that you think that there is questionable or no coverage. If you lawyer up, the adjuster will mirror your decision.
- *KISS works here.* Keep it very simple. The letter should identify: (1) the policy of insurance upon which you are making the tender; (2) the fact that your company is the insured or policyholder; and (3) the nature of the claim. Attach the claim. The more analysis your letter contains, the more there is for the claims person to argue with. Put him or her in the position of analyzing from scratch since they have to then analyze every portion of the insurance policy.
- *Your tender should simply ask that the insurance company acknowledge the claim and defend it.* You are not asking whether the claim is covered or not. Assume it is and make it look as if you are passing it on for their handling.

- *Don't ask your independent broker whether a claim is covered or to tender to an insurer on your behalf. She owes duties to the insurers that you don't. There is too much of a chance that your broker will provide details to the insurer that is not in your interests to provide. Simple math proves the point: how many policies does the broker have with the insurance company? How many does she have with you?*
- *Tender virtually every claim you get to each of your insurers. The standard whether to tender a claim to a particular insurer is whether it would be absurd to do so. Don't try to analyze the complaint and the policies to determine whether to tender. You may miss an otherwise covered claim or miss the opportunity to have the insurance company mistakenly accept an otherwise uncovered claim.*

We hope you find this information helpful, but keep in mind we are not offering legal advice here. If you have questions regarding a specific claim or otherwise, check with your lawyer or contact Mark Sayre at 312-676-5463 or by email at mark.sayre@valoremlaw.com.