

# WORKERS' COMPENSATION

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REPORT

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## Defense attorney reveals strategies to cut legal expenses in WC

The number one way to reduce your legal expenses is not to incur them in the first place. That blatantly obvious suggestion comes from someone who makes his living as an attorney.

Richard Lenkov has focused his practice on defending companies in workers' comp cases since joining the Illinois bar 14 years ago. He's not worried that business will dry up if employers and insurers are wiser in their approach to the legal aspects of the system.

"Let your adjusters adjust and your attorneys practice, and keep their roles separate," is one of Lenkov's top tips to reducing legal expenses. "Often attorneys are asked to perform basic investigative tasks, which is OK, but it's cheaper for claims handlers to do so."

During the National Workers' Compensation and Disability Conference® & Expo, Lenkov will join a plaintiff's attorney to provide a glimpse into the minds of opposing counsel on key issues. For Workers' Compensation Report, he outlined his ideas for specific ways to reduce legal expenses by employers, insurers, and other system participants.

Attorney involvement boosts claim costs by 12 to 15 percent and attorneys are involved in 5 to 10 percent of all workers' comp claims in most states, according to the Insurance Information Institute. With these costs continuing to rise, Lenkov offers insights to help eliminate waste, cut through legal jargon, and get to the bottom line as quickly as possible.

**Understand state differences.** While there are universal issues, every state handles some elements of workers' comp differently. Claims handlers should be empowered to make decisions on their own. By communicating internally and holding round-table discussions on difficult issues, you can exhaust your internal resources before hiring counsel.

"Many adjusters handle multiple states, and it's tough to keep track," Lenkov said. "But to the extent you can, you're going to save money rather than sending it to counsel."

**Communication is essential.** Where there are undisputed benefits, Lenkov recommends paying them as soon as possible.

For other claims, understanding the fine art of negotiating is vital.

"My overall theme for negotiations is to try to avoid any conflict to the degree you can because that costs money," he said. "On the other hand, sometimes you want to take a different approach and be more aggressive. For example, a claim with a lot of issues in dispute."

The more complex the claim, the larger the bill. One way to avoid a claim becoming more complicated is through good communication. As Lenkov points out, "vinegar is more expensive than honey. Good communication between the claims handler and claimant and with the claimant's attorney is key."

Lenkov makes it a point to stay in touch with the plaintiff's attorney regularly to make sure he's not missing anything. "Having that five-minute phone call rather than getting surprised is well worth it," he said. "The bottom line is plaintiff lawyers who are angry are going to cost the claim money."

Likewise with claimants themselves. "Check in with the claimant every couple of weeks," he said. "If you're not com-

### Find the right attorney

One of the top ways to reduce your litigation costs is to know your attorney and have your game plan spelled out in advance. If you are free to choose your counsel, do so with an eye toward costs, advises Richard Lenkov, a partner with Chicago-based Bryce, Downey & Lenkov LLC.

"Look for a firm that is conscious of litigation costs, not just billable rate but overall cost of the case from start to finish," Lenkov suggested. Ask for the average number of months a file is open and the average money spent per case, he said.

You don't want surprises from your attorney, so ask what the projected outcome is, how long it will take to get there, and how expensive it will be.

"Don't be afraid to ask 'Why are we pursuing this strategy,'" Lenkov said. "And, 'Is it the most cost-effective means of resolving the case?'" ■

municating, people aren't going to be happy, and the case is going to stagnate."

**Out-of-the-box strategies.** Waiting for the claimant to make the next move can be costly and is unnecessary, Lenkov said. He suggests various options for moving a case forward, such as settlement days.

"You have a bunch of cases brought up in one day, and have the decision-makers for the employer invite the claimants to settle," he said.

Another idea is to file motions to dismiss. "Instead of waiting for the claimant to respond, if they're not responding or not attending treatment file a motion to dismiss the case," he said. Pretrials are another option to get the case in front of a judge and dispose of it quicker rather than waiting for the trial to begin.

He also suggests not waiting to make an offer. "There's nothing wrong with making an offer before you get a demand," he said.

Lenkov also recommended:

- Reading all vendors' bills carefully.
- Demanding accurate budgets from day one, as well as periodic updates.
- Considering records review versus a full-blown IME.

*Richard Lenkov's session, What They Are Thinking: An Inside Look Into the Strategies of Plaintiff and Defense Attorneys, will be presented during the National Workers' Compensation and Disability Conference® & Expo in Las Vegas. For additional information, visit the conference group on LinkedIn. Conference registration is not required to join the LinkedIn group. E-mail Richard Lenkov at [rlenkov@brycedowney.com](mailto:rlenkov@brycedowney.com). ■*