

NO STOPPING AT THE BAR

QUICK LOOK

- The failure to grasp and master essentials in the insurance legal realm can lead to claims of bad faith and losses in court.
- Rookies need to practice in real-world situations with good oversight and forthright correction.
- Mentoring can come from within the legal firm and from claims pros.

BY ROBERT T. HORST AND MICHAEL A. HAMILTON

The term “coverage lawyer” is most certainly a term of art, albeit not, per se, one of endearment. It necessarily implies specialization unique to insurance attorneys, and it pre-supposes knowledge and capabilities scarcely addressed, let alone taught, in any law school. So where do experts come from, and how

can your legal counsel get beyond the bar?

Coverage lawyers practice in a limited area of the law, with a deep understanding of the contracts, case law, and regulatory framework that form the insurance coverage universe. Such an approach—honing in on a specialized niche—has

become commonplace within the modern practice of law. Other straightforward examples of focused practice areas that warrant, even demand, specialization include family law, taxes, zoning, and civil rights. Lawyers who are already highly educated, intelligent, well trained, and schooled in the

Claims lawyers need to do more than just pass their exam.

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art of advanced analytical thought must once again be educated, trained and schooled in their precise area of the law in order to excel, provide capable coverage analysis and ultimately be of good service to a client or an effective advocate before a court.

The so-called “real world” for an insurance coverage lawyer includes technical insight and analysis particular to the discipline. Distinction and interpretation among the different coverages and product lines blur the hoped-for consistency. Policy forms vary between carriers, and jurisdictional differences pose additional challenges for the active coverage attorney. The insurance practitioner’s world is one that demands ongoing study and continuing education on top of a strong foundational base of knowledge.

What you don’t know could fill a book. —Junior Soprano
New lawyers need to learn. New coverage lawyers need experience. The complexities of the insurance world mean that more than just book-

learning will be required. Even the basics of contract law may not be as simple as taught in school. The fundamentals still apply, but they are a beginning—not an end.

Certain principles and tenets of coverage analysis are almost universal, existing in each and every treatise and court opinion that addresses the foundation of insurance contract interpretation. A contract of adhesion must be construed against its drafter. The clear and unambiguous terms of a contract will be enforced. Words of an insurance policy must be given their ordinary meaning. Sounds easy enough, right?

Well, there’s a simple reason that these cardinal rules are just the starting point of many coverage analyses: Policies of insurance can be complex, lengthy contracts. When a dynamic situation is considered in the context of such an agreement, facts, interpretations and expectations all become fluid—maybe even conflicted. The analysis can be challenging and may warrant expertise and knowledge not engrained in a junior lawyer; moreover, what may be straightforward and readily apparent to an experienced practitioner may seem complex and novel to the inexperienced attorney.

The importance of creating the requisite foundation for learning the specialty cannot be overstated. The failure to grasp and master essential building blocks for being a successful coverage lawyer can have significant consequences. Preparing an incomplete or insufficient reservation of rights letter could lead to a waiver of policy defenses. Improper investigation and evaluation of a

loss could potentially lead to bad faith exposure for the insurer. New lawyers must be aware of such consequences to gain an understanding of the importance of developing good habits early on in their careers.

In a recent article for the New York State Bar Association’s *Journal* (September 2010), entitled “Training Lawyers for the Real World—Part One,” Rachel Littman states: “New attorneys are expensive, inefficient, unable to write, and lack the business sense and professional skills necessary to function immediately as value-adding, practicing attorneys. That is some of the sentiment being expressed in the legal industry these days...and students themselves, many of whom come to law school for lack of any other career path, find later that law schools do not prepare them well for the practice of law.”

The solution? Let the inexperienced lawyers learn. They must enjoy hands-on experience with research, writing, policy analysis, factual investigation, etc. Only through these practices will they become experi-

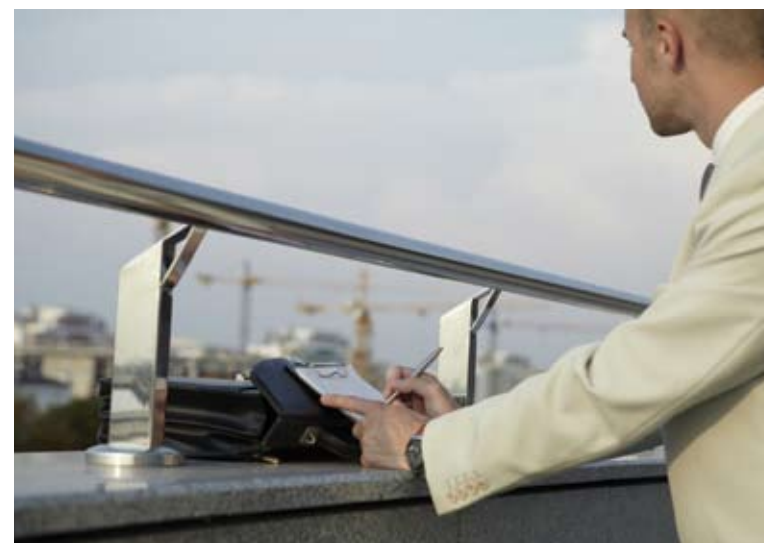
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enced. Yes, there is a tension between maximizing attorney output and minimizing carrier input—especially of the insurer’s time, money and risk—but there can be tremendous efficiency and benefit built into the attorney-client relationship when both the insurer and the lawyer openly discuss the use of inexperienced associates who are, as a practical matter, in training. Naturally, billing needs to reflect realistic prices for legal representation. The work product from rookie lawyers is simply worth less than that of an experienced, knowledgeable specialist. That said, the work product does have real value.

I not only use all the brains that I have, but all that I can borrow. —Woodrow Wilson

A particularly compelling solution is a mentoring program including both formal and informal mentoring from both within the legal ranks and outside, particularly from claims pros. The establishment of small working groups is one method of mentoring. In small groups, the group leader has the opportunity to interact regularly, on and off client projects, with all members of the group, senior and junior. However, as the group gets larger, most of the leader’s time will be spent with senior colleagues, and it will be these people who must motivate, energize, supervise, and develop the junior staff. It becomes the group leader’s job to ensure that this happens.

Junior staff, by definition, are at the early stages of a career and need one thing above all: the chance to develop and build their skills. Without this, their potential



contribution to the good of the industry will never be maximized or realized. How well skills are built depends upon two key processes. The first is the job assignment system that decides what projects they get to work on (and for what part of the project they are given responsibility). The second is the quality of supervision that they receive while working on these assigned projects.

Some organizations believe that assigning repetitive, similar tasks to associates builds expertise and excellence. What they are building, however, are one-dimensional attorneys, ill equipped to handle the complexities and scope of insurance counsel and litigation. Therefore, junior staff should receive a broad array of assignments, including research, writing legal memoranda, drafting opinion letters, preparing reservation of rights letters, drafting pleadings and motions, interviewing witnesses, taking examinations under oath and depositions, and handling arbitrations. Equally important is that less experienced attorneys must be closely

supervised by senior staff members, either in the firm or in the carrier’s legal department, creating the optimal learning environment where quality work is reinforced and substandard skills are discussed and corrected.

Once we accept our limits, we go beyond them. —Albert Einstein

There is also more to learning how to be a successful coverage attorney than on-the-job training. Keeping abreast of the changes in the law is crucial to any attorney’s development. There are numerous Web and print-based sources of insurance information. These resources must be reviewed on a daily or weekly basis to ensure that new developments in the law are not missed.

Similarly, one of the best ways for new insurance coverage attorneys to enhance their expertise is to become involved in insurance industry organizations. There are numerous groups, from state and local defense counsel and insurance forums to national organizations, such as the Defense Research Institute or the Property Loss Research

Bureau. Networking with longtime insurance legal specialists adds not only to a lawyer’s personal body of knowledge but also to their Rolodex. The rule of thumb: When you don’t know something, ask an expert.

In sum, there isn’t a course or a book or a school that makes a successful insurance coverage attorney. It is the variety and quality of learning experiences that shape and define expertise. Receiving practical experience under the tutelage of a mentor or supervisor in the specialty is crucial. In addition, the individual’s specific skill set may dictate a type of industry training and education that is particular-

ly beneficial. Some people flourish in social settings; others may benefit more by writing articles on new developments in insurance coverage. One thing is certain—the industry relies on excellent legal support to fight unwarranted claims, both in court and prior to trial. Coverage attorneys need to delve deeply into the industry and hone their expertise and practical skills. **CA**

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