

Strategies for Eliminating Legacy Claims

By its nature, life has risks. Furthering those risks are situations and circumstances in the workplace that can result in injury or illness. Workers' compensation is designed to provide both indemnity and medical benefits for periods of time when an individual is unable to work, as well as services to cure and/or relieve the effects of the injury. The vast majority of these injuries are relatively minor; sprains, strains, minor lacerations and the like. The much smaller percentage of injuries are severe from an acute perspective, or develop into a chronic condition due to failed surgeries, overmedication, or simply not complying with medical treatment plans.

While these types of cases, more formally known as legacy claims, may represent a very minor percentage of the total claims for a self-insured employer or insurance carrier, they generally contribute to a disproportionate percentage of the overall exposure and costs. In many instances these legacy cases are seen as impossible to resolve. With the correct approach and use of the numerous available tools, most of these cases can be resolved amicably between the settling parties.

So what are these tools that help facilitate the resolution of these high dollar, high exposure cases, and what is their importance in the settlement process? There are three main tools at the adjuster's disposal that can help control the direction a claim takes and subsequently lead to swift and effective settlements on these high exposure files. Sometimes just taking a step back and looking at it from a different angle can help solve a problem, and these cases are really no different. Many of the same tools used on the more routine claims can prove to be quite useful in resolving these high dollar claims simply by using them in a different context.

The first tool at one's disposal should be the ability to maintain a complete knowledge and understanding of not just the claim itself, but also of the injured worker. That might sound like a no-brainer, but again, look at that knowledge and understanding from a different perspective. Claim inventories are at an all-time high. It is too easy to get caught up in the day-to-day elements that take up the majority of an adjuster's time, and overlook key aspects of a claim that can quickly elevate the case to high exposure status. Often times, one single statement buried deep within a packet of medical records can be the indicator that a potentially high dollar case is at hand. A simple mention of a spinal cord stimulator after a failed fusion can escalate the value of that claim exponentially. Similarly, what about an understanding of what the injured worker needs beyond medical care? What makes them tick? Is a child going off to college? Are there additional health issues within the household such as an ill spouse? More often than not, the injured worker has divulged valuable pieces of information along the way that, if noted during the course of the claim and addressed during negotiations, can open the door to a successful resolution. Simply paying attention to the injured worker and not falling into the trap of the "routine claim" can pay off in the long run.

The second tool in the legacy claim resolution toolbox, and quite possibly the most important aspect of working toward settling these types of cases, is understanding how to correctly value the future exposure. Too often an overly conservative approach is taken toward what the *ultimate* exposure of a case looks like. The future exposure is what it is, and overlooking key indicators of that value can prevent the necessary authority from being calculated, requested, and granted. If one enters into settlement negotiations but has failed to correctly value the case, those negotiations are bound to stall before they even get started.

None of us possess a crystal ball that can predict the future. When valuing cases, knowledge of the facts of the case, a historical analysis and understanding of the impact of the aging process, as well as co-morbid conditions are all critical components of making an educated projection as to how to assess future value. To place a proper value on the future exposure of a claim, one must possess an understanding of the financial aspects of the case. Analyzing the annual expenses in a claim file is critical to understanding what the future may hold. Once a case is beyond the acute phase of the injury and the treatment has stabilized, it is safe to presume that the treatment is going to maintain at that level for quite some time. On top of that, an adjuster must be sure to account for inflationary factors relative to medical treatment, knowing that the cost of treatment today is a fraction of what it will cost in the distant future. Understanding and acknowledging that the cost of inflation plays a significant role in future exposure is key to resolving these high exposure cases.

Furthermore, an understanding of the aging process and the impact that co-morbid conditions have is also critical to understanding the future value of the case. Individuals with significant risk factors such as smoking, obesity, hypertension, diabetes, etc. are much more prone to delayed recovery from an injury as well as poor outcomes or results from surgery. Using the examples above, if the individual described was a cigarette smoker, the probability of a failed spinal fusion is greatly increased, and the likelihood of a second fusion failing is significant as well.

The third and final tool to help the adjuster resolve these high exposure, high dollar claims, is to enact mitigation techniques when the future value of a claim becomes excessive. As mentioned above, the future exposure, when calculated correctly, simply is what it is. Projecting the annual expenses out over an individual's lifetime, making sure to factor in the rate of inflation, can lead to a daunting final number. But the question must be asked at this time, what can be done today that will not decrease the standard of care, and at the same time will result in a more favorable future exposure. Looking closely at the prescription usage and the use of annuities to fund settlements are two mitigation techniques that, when implemented correctly, can drastically reduce the future exposure and position that claim file for a proper settlement.

The cost of prescription medication has soared in recent years. A common thread seen in most high exposure cases is a medication list a mile long. An adjuster should not simply look at this list and accept it at face value. Look closer. What is being used? Are there brand name drugs on this list that can be switched to a generic version? Sometimes a simple phone call to a treating physician can reduce the prescription costs tremendously. Are all drugs on the list necessary? Has a drug been introduced that is doing the work of two medications, and if so have the prior medications been discontinued? The point is that a proactive claims handler can often times reduce the cost of future prescriptions by asking questions and not just accepting a medication list at face value. Ask questions, get to know the treating physician and pharmacy benefits manager, or PBM. They possess a wealth of information and can recommend strategies to reduce the future exposure.

Structured settlements are another mitigation technique that can reduce a claim's future exposure. The use of an annuity to fund a settlement simply uses the time value of money to pay fixed payment over time that will ultimately total the agreed upon settlement amount. The advantage to a defendant is that a structure can be funded with an amount much lower than the settlement figure, and the time value of money will go to work ensuring the total settlement dollar figure is paid out in full to the injured worker over time. A defendant is able to free up settlement dollars which promotes an outright

settlement, and the injured worker is guaranteed a steady stream of set periodic income that not only accounts for future medical and personal needs, but also protects the entire settlement from the all too familiar dissipation risk.

High exposure, high dollar claims present a whole host of issues that can weigh heavily on the mind of a claims handler, and drastically affect the financial viability of an employer, self-insured, or carrier. It is far too easy to simply “wait it out” and hope the case organically takes a turn that will lead to a more favorable outcome. That can sometimes be a long wait, and the result of that delay more often than not leads to higher costs to the defendant whether the case ultimately settles or not. Tackling these cases head on and understanding that there are steps and techniques that can be done to help mitigate the future exposure will promote a culture conducive to reaching an amicable settlement on these legacy files.



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Greg Gitter is the President of Legacy Claim Solutions, a firm specializing in negotiating resolution of High-Exposure Workers' Compensation claims for excess carriers, employers, insurance companies and any other parties involved in Workers' Compensation claims. Greg has been involved in the Workers' Compensation arena for 16 years in various capacities including claims adjusting, investigations and management of claims staff. He has extensive experience working within the California Workers' Compensation system as well as intimate knowledge of Jones Act and U.S. Longshore & Harbor law. Over the years, Greg directed his focus on the impact of Long Term, High Exposure, Complex and Catastrophic Workers' Compensation claims and he developed a specialized skill set and specific strategies to identify and resolve these claims to the mutual benefit of all parties involved.