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A 360 Degree View of the Psychology of Catastrophic Claims – Litigation, Medical, and Risk Management strategies

I. Understanding Catastrophic Injuries

Defining a Catastrophic Injury

While the definition of "catastrophic" injury may vary from state to state, the general connotation is an injury depriving the injured worker of life or limb, or causing a need for life-long care based on significantly disabling forces.

Some agencies define catastrophic based on the value of the loss, but this can be misleading when claims are denied or become "catastrophic" over time. A flexible approach is encouraged as well as creating red flag alerts in an agency's data analysis and claim tracking systems.

Identifying and Aligning the Defense Team

When dealing with a catastrophic injury, it is essential to identify a team that works well together. The ideal team will consist of a seasoned claims examiner, an alert risk manager, an experienced broker/carrier, a responsible medical management team, and a defense attorney who can be both empathetic but also firm.

The team should be identified in advance and be ready to hit the ground running when a catastrophic injury occurs to adopt the appropriate intellectual and psychological approach to handling this claim. Each member of the team will have to orient their thinking in light of the particular nature of the injury including the following:

- Defense counsel
- Claims professionals
- Insurance and reinsurance professionals

- The medical management team.

II. Once Identified, Catastrophic Claims Should be Handled Deliberately.

Catastrophic injury claims are a “horse of a different color.”

Ordinarily, a non-catastrophic workers’ compensation case that becomes litigated is going to be assertively defended by the TPA, the carrier, and the defense attorney, if there is one assigned. In a standard workers’ compensation claim, medical treatment will be administered subject to utilization review and benefits will be heavily scrutinized. The “not a penny more than they’re entitled to” philosophy prevails.

The cost-drivers are often litigation over matters of whether the injury occurred as a result of, or in the course of, the employment relationship. Extensive surveillance and discovery costs may be expended in order to minimize the threshold liability for compensation. The claims team’s focus is on the nickels and dimes, which can add up over time, but the overall exposure is generally “reasonable.” That said, the goal of the professionals defending a standard workers’ compensation claim is to get it closed / dismissed as quickly as possible in the most cost-effective way as possible.

A catastrophic injury claim should also be handled with an eye towards the cost-efficiency, but once the injury becomes catastrophic (or at the outset of a significant injury), the “get it closed cheap and quick” mindset no longer serves anyone in the case. Instead, the greatest cost efficiencies will be won through patience and perseverance, and will arise from an honest assessment of the injured worker to determine early on where the “tar pits” are in the case.

Arms-length vs. Empathy

While care should be taken of the injured worker, care should also be taken to maintain independent legal and professional judgement. Empathy for the injured worker has to be balanced by good business sense, but the two concepts are not mutually exclusive.

Handling catastrophic claims may trigger an emotional response among those on the defense team. Although the defense community is made up of warriors, underneath the armor lies a real person. This particular injury may trigger an emotional response for a variety of reasons and we have to be honest about that. Did an aunt have the same type of cancer? Did a friend die in a similar accident? Does the injured worker remind you of your favorite spouse or a parent, perhaps? Perhaps a member of the team has just been through the ringer and is under a tremendous amount of pressure. Self-care and personal accountability are essential when handling catastrophic claims, particularly if

new to them or the claim is particularly gnarly somehow. If any member of the team becomes too emotionally invested or is unable to maintain objectivity, they may need to step back and bring in a pinch-hitter.

Cost-effective Solutions in Catastrophic Injuries require a Big Picture perspective

A woolly mammoth focused on its toes will end up preserved as a part of history at the La Brea Tar Pits. If that mammoth had just looked up and ahead of its own feet, perhaps it could have taken a wider path.

Similarly, when a claim is recognized as a catastrophic injury, the team should be assembled, the team should communicate, and a plan needs to be put in place, including a timeline of pivot points and reporting thresholds (eg: to the excess carrier). As the claim progresses, the plan should be reassessed for validity at 5 key stages.

III. The Five Key Stages of Handling a Catastrophic Claim Include the Following:

1) Initial Liability Assessment

- Phone Tree 101: Contact preferred counsel, TPA, and/or carrier and start talking.
- Keep talking. Then, talk some more.
- Don't avoid the situation. Don't push the big case to the bottom of the pile on your desk or into a remote folder in your system. Face it, appraise the situation, and own the decision, knowing you can usually mitigate later if need be.
- Is your organization accepting responsibility for this case? Time is of the essence if you need to make calls, speak with witnesses, get ambulance information, etc.

2) Triage and Emergent Care

- Identify site of injury, Hospital / ER of initial treatment; establish contact with the injured worker and/or their family.
- Establish rapport with the injured worker and their treating physicians to keep the information pathways as open as possible.

3) Secondary Liability Assessment

- Maintain your legal obligations to provide care and most importantly maintain constant communication with the injured worker / their family. Be someone worthy of their trust as they deal with a potentially life-changing event.
- As you learn more about the event(s) leading to this injury, don't lose focus on your defenses completely - have you identified any new information that would lead you to deny liability, pursue subrogation / third party liability, or avenues to mitigate exposure.

- Cost / Benefit of secondary denial: assess the potential exposure and measure it against impact on the injured worker of being denied benefits – will they retain counsel?
- Has the injured worker retained counsel? Communicate with them to mitigate the tendency towards excessive pleadings.
- Assess compensable consequence injuries once the emergent needs have been addressed.

4) Stabilizing Care / Administration of Ongoing Benefits

- As medical care is coordinated, stay in communication with the caregivers, medical professionals and others involved in the recovery process.
- Go ahead and utilize smart medical management practices to mitigate exposure, but the emphasis is on taking care of the injured worker's body and mind during the recovery process.
- Make sure benefits are appropriately paid and keep an eye on rules that change based on a catastrophic injury. For example, in California the injured worker's entitlement to temporary total disability can extend from 104 weeks to 240 weeks. Also, in California, a worker injured after 2013 is not usually eligible for increased permanent disability indemnity, but they can be if the claim is catastrophic in nature.
- During this stage, the focus from the claims examiner, carrier, and medical management professionals is to take care of the injured worker and avoid their retaining counsel, which industry statistics have shown increases the costs of a claim by 20% on average.

5) Resolution / Settlement

- In a catastrophic claim, the injured worker may never get "better" so the goal is to get them stabilized.
- Each state may have a slightly different definition of stabilized, but at some point, they are not going to get significantly better or worse, with or without further care.
- Remain mindful of reinsurance policy reporting requirements and collaborate with their preferred counsel, if designated.
- Throughout the case, we want to keep focused on the injured workers' well-being to set them up for success once the injury closes out. If they feel in control, you are more likely to get cooperation and a willingness
- Identify a (reasonable) life-care plan, structured settlement options, assisted living and/or home assessments as well as post-settlement medical management options for the injured worker. Look at products such as Medicare gap coverage and plans that allow the Medicare set aside to be structured and/or managed by a third party to relieve the burden of CMS reporting on the claimant.
- COMMUNICATE these to the injured worker. Unlike an ordinary claim where cards are held close to the vest, there needs to be an up-front reality check about

- what is or is not going to be required for the catastrophically injured worker to move forward after claim resolution.
- Maintain defenses, credits (ie: third party recoveries), and establish important guidelines for moving forward if settlement does not include a full release of further liability.
 - Report and submit reimbursement claims, if any, to the appropriate excess carrier representative.

IV. After Action Plan – Assess the Claim and Prepare for the Next One

Communication is essential, but so is documenting the events that take place during administration of a catastrophic claim. With a standard claim, the idea is get it gone and move on to the next one. Catastrophic injury claims require a big picture perspective that applies to the claim itself, but also to future claims. Understanding history is the only way to prevent repeating history.

Upon resolution of a catastrophic injury claim, it is highly recommended to assemble key members of the team for a powwow to discuss what went right, what went wrong.

The primary focus is to put a solid plan in place for the next time a catastrophic injury claim occurs.

Having good procedures in place will facilitate positive behaviors, which will in turn enable more positive outcomes, even in the face of tragedy.