Selection of Defense Counsel

Proper legal representation is crucial to the self-insured employer. While employers with an insurance company handling their claims can leave the selection of defense counsel up to the insurer, the self-insured employer must take on the responsibility of selecting and hiring the best attorneys for the defense of their disputed workers’ compensation claims.

**Identifying Possible Attorneys**

The screening, selection and hiring of a defense attorney begins with identifying possible attorneys. Your adjuster(s) can often identify potential defense attorneys based on their experience with various attorneys in the past. Industry groups that you are a member of can recommend defense attorneys. Your local RIMS chapter can also provide you with a list of local workers’ compensation defense attorneys.

Any attorneys that do not specialize in workers’ compensation defense should be immediately removed from consideration. Workers’ compensation statutes are often complex and require an experienced attorney who knows the various subtleties of the jurisdiction. Due to the specialized nature of workers’ compensation, plaintiff attorneys quickly recognize when the defense attorney is not an expert and will exploit the defense attorney’s lack of knowledge. Also, the workers’ compensation defense attorney who knows the plaintiff attorneys from past cases will know which attorneys are quick to settle or who over evaluate their cases. Familiarity with the judges or hearing officers is another plus for the defense attorney who specializes in workers’ compensation.

Excellent defense attorneys can come from many different types of law firms. Large national law firms, large regional firms, large local firms, small local firms and even sole practitioners are all options that can be considered. While the large firms have more resources to support their attorneys, it is the individual attorney that will be handling the claim, and normally other attorneys within the law firm will not know anything about a particular case being handled by another attorney within their firm.

**Interviewing Possible Attorneys**

After narrowing down the recommended attorneys to the attorneys who specialize in workers’ compensation defense, an interview should be set up with the perspective attorneys. The interview of the defense attorneys should be handled very much like the job interview of a perspective employee. You want to learn as much as possible about the defense attorneys and obtain the attorney’s input on why he/she should handle your workers’ compensation claims. It is beneficial to have the claims supervisor or a senior adjuster to participate in the interview in order to give you feedback on the answers provided by the attorneys interviewed.

Each attorney interviewed should be asked the same questions so you can make an accurate determination as to which defense attorney is best suited for your company. There are several topics you should discuss with the defense attorneys being interviewed including:

* How much experience does the attorney have with hearings before the Board / Commission / Labor Department?
* What does the defense attorney do to control the cost of litigation?
* How often does the attorney communicate with the adjuster and the employer, and by what means?
* What length of time does the attorney considers reasonable to respond to inquiries received from the employer and the adjuster?
* Is the attorney willing to comply with your specific litigation management guidelines?
* How often does the defense attorney work out a resolution of the claim that is amenable to the employer versus how often does the resolution depend on the Board / Commission / Labor Department making a determination?
* How versed is the attorney in peripherals areas of law like social security disability, subrogation, vocational rehabilitation, etc.?
* Does the attorney handle the claim himself/herself, or does it get reassigned to a junior partner to be handled?
* What is the hourly rate for the attorney, the junior partners, the paralegals, the legal assistants?
* Will the law firm bill for the work completed based on your time frame for billing, whether monthly or quarterly?
* Can the attorney provide references of other clients, preferably in the same industry your company is in?

**Deciding on the Attorney**

After considering the answers given to each subject discussed in the interview, eliminate the attorneys who you do not feel comfortable. Answers to your questions that are not precise and insightful should be considered a red flag, as you will need defense counsel that always provides you with insightful and direct answers to your questions.

Unless one defense attorney stands out from the others, select the top two or three perspective attorneys who provided the best answers to your interview questions. Compare their answers and discuss with the claims supervisor or adjuster who sat in on in the interviews for their perspective.

Once you have made your decision on who you will utilize for the defense of your workers’ compensation claims, notify the attorney selected and make arrangements for when you will start assigning files. Also, notify each of the other attorneys interviewed and express your appreciation for their time. Not only is it the right thing to do, you might need one of them in the future.