

**COUNCIL ON LITIGATION  
MANAGEMENT  
LITIGATION GUIDELINES**

## **I. General Purpose of Litigation Guidelines**

The Insurer expects to work with Defense Counsel and its client to achieve the best result for the client in an efficient manner consistent with the Defense Counsel's ethical obligations. Nothing contained herein is intended to, nor shall, restrict Defense Counsel's exercise of independent professional judgment in rendering legal services for the Insured or otherwise interfere with any ethical directive governing the conduct of Defense Counsel.

## **II. Defense Counsel's Ethical Duty**

The Defense Counsel's ethical duty is always to its client(s). Various jurisdictions define the "client" differently and these Guidelines must be construed in accordance with the Defense Counsel's ethical obligations in the applicable jurisdiction. Nothing in these Guidelines should ever be construed to interfere with the Defense Counsel's ethical duty to their client(s).

## **III. Conflicts of Interests**

Defense Counsel is required to complete a conflict of interest review immediately upon receipt of the assignment. Defense Counsel is required to affirmatively confirm that no conflicts exist and that the firm is able to handle the matter. Defense Counsel must continue to review conflicts throughout the representation. Any conflict identified is to be reported immediately *via* phone and e-mail to the claims professional and client.

All waivers for Conflicts of Interests must be cleared by \_\_\_\_\_ of the Insurer. Requests for a waiver must be *via* e-mail and must contain a clear description of the: 1) Conflict 2) Scope of the contemplated representation 3) Scope of the Waiver.

## **IV. Retention Agreement with Model Form**

See Appendix 1

## **V. Confidentiality Provision for Litigation Management and Reporting Guidelines**

In order to facilitate the common interests of the Insurer and the Insured in the defense of a particular case, it is imperative that there be a free flow of information between the Insurer, Insured and Defense Counsel, including, but not limited to, confidential and proprietary information of Insured and Insurer. It is expected that Defense Counsel shall take reasonable precautions to insure that the information shared by the parties, including without limitation, attorney-client communications and the mental impression and, work product of Defense Counsel, remain privileged and/or confidential and is not shared with anyone other than the Insurer, Insured, Defense Counsel and their respective employees and agents who are reasonably necessary to the defense and/or administration of Insurer's and Insured's common interests.

## **VI. Media Contact**

In matters involving representation of either an Insured or an Insurer, extrajudicial statements by Defense Counsel to the media are governed by relevant state or federal rules of professional conduct, and prohibited communications should not be made under any circumstances. (See, *e.g.*, ABA Model Rule of Professional Conduct 3.6.) To the extent extrajudicial statements to the media are permitted and may be deemed in the best interests of a client: (a) in matters involving representation of an Insurer, all media inquiries should be discussed with and all responses approved in advance by the supervising in-house counsel; and (b) in matters involving representation of an Insured, all media inquiries should be discussed with and all responses approved in advance by the Insured and, to the extent applicable and in the absence of any conflict, by the supervising in-house counsel and/or claims professional.

Contact with Others: Defense Counsel's contact and communication with others (including but not limited to the Insured, the Insurer, other counsel and parties, witnesses, and the tribunal) should reflect the highest professional standards and adhere to all relevant state or federal rules of professional conduct. (See, *e.g.*, ABA Model Rules of Professional Conduct 1.4, 3.3, 4.1 - 4.4.) Prior to responding to requests from third parties (including but not limited to other Insurers, co-defendants, consultants, and witnesses): (a) counsel representing Insurers should contact and obtain the approval of supervising in-house counsel; and (b) Defense Counsel representing an Insured should contact and obtain the approval of the Insured and, to the extent applicable and in the absence of any conflict, the supervising in-house counsel and/or claims professional.

## **VII. Initial Evaluation**

### **INITIAL EVALUATION AND LITIGATION PLAN - COVERAGE**

Within 30 days of the assignment, Defense Counsel shall submit a written Initial Evaluation and Litigation Plan to the Claims Professional.

Before submitting the Initial Evaluation and Litigation Plan, Defense Counsel is expected to have communicated with the Claims Professional about key issues and goals; reviewed all available file materials; and completed any preliminary investigation and research, including communication with the Insured and other counsel. The Company understands that Defense Counsel may not have fully developed the facts and issues at this early juncture. Therefore, while Defense Counsel is expected to consider each of the Key Points contained in Appendix 2 in developing the Initial Evaluation and Litigation Plan, Defense Counsel need only discuss those Key Points that apply at this time.

## **INITIAL EVALUATION AND LITIGATION PLAN - DEFENSE**

Within 30 days of the assignment, Defense Counsel shall submit a written Initial Evaluation and Litigation Plan to the Claims Professional. Before submitting the Initial Evaluation and Litigation Plan, Defense Counsel is expected to have communicated with the Claims Professional about key issues and goals; reviewed all available file materials; and completed any preliminary investigation and research, including communication with the Insured and other counsel. The Company understands that Defense Counsel may not have fully developed the facts and issues at this early juncture. Therefore, while Defense Counsel is expected to consider each of the Key Points contained in Appendix 3 in developing the Initial Evaluation and Litigation Plan, Defense Counsel need only discuss those Key Points that apply at this time.

### **VIII. Legal Budget**

At the outset of the engagement, the Defense Counsel will be informed of the type of budget to prepare, itemized, phased or other.

1.     **Itemized**  
Set the matter out in phases, chronologically, basically following the ABA billing code Guidelines or UTBMS Guidelines, and stopping the initial projection at the Settlement Phase, prior to Pre-Trial and Trial Phases.
2.     **General**  
Provide a broad outline of the matter, chronologically tracking the litigation plan.
3.     **Phased Budget**  
See Appendix 4

### **IX. Philosophy of Staffing**

Your law firm will designate one attorney to have primary responsibility for each case on which its services are requested. The case should be staffed effectively and economically. A balance should be struck between the efficiency a more experienced lawyer brings to a given task and the advantages of having the task performed by a less senior lawyer or paralegal. Duplication of effort within the firm must be avoided.

To achieve efficiency and value, the roles and responsibilities of the staff members should be clearly defined and appropriate to each individual's qualifications and level of experience. While a quality work product is always the main objective, Defense Counsel should delegate work to subordinates wherever possible in order to promote efficiency.

### **X. Determination of and Process for Document Preservation/Production**

Each company should customize and include in Appendix 6.

## **XI. General Principles of Communication/Advance Notice**

Each company should customize and include in Appendix 7.

## **XII. Documents Provided by Defense Counsel**

Unless otherwise directed, Defense Counsel is required to provide the following documents:

1. **Material Pleadings**
  - a. Complaint
  - b. Answer
  - c. Substantive Motions
  - d. Amended version of an initial pleading
  - e. Other material pleadings that may be identified by Insurer
  - f. Releases and Orders of Dismissal for final judgments

Defense Counsel should comply with all requests for information and documents; however, any information or documents that are deemed privileged shall not be disclosed without the consent of the Insured.

2. **Statement of Damages**
3. **Statutory Offers or Demands**
4. **Written Discovery**
  - a. Copies of pertinent written discovery (and their answers) propounded on the Insured
  - b. Answers to written discovery propounded on other parties
  - c. Defense Counsel is to provide a brief cover letter highlighting significant information and any impact it may have on the case
5. **Depositions**

Depositions must be jointly agreed to as part of the Plan for Litigation and Budget. Defense Counsel should consult with the designated claim professional before conducting or attending any deposition not contemplated in the Plan for Litigation and Budget.

Deposition Reports are to be provided within 30 days after the deposition has been conducted. The reports are to include:

- a. Narrative summary of deponent's testimony
- b. An evaluation of the impact on the case even if it has not changed from previous evaluations
- c. An evaluation of the type of witness the deponent makes

6. **Briefs**

Briefs filed in connection with approved motions and briefs filed in response are to be provided by Defense Counsel.

**XIII. Case Developments & Reporting requirements**

Reports are to be directed to the claims professional as well as any other designee. It is expected that Defense Counsel will keep the Insurer fully informed of the progress of all litigated cases, and will forward timely and complete reports on each case assigned. It is imperative that there be continued communication by Defense Counsel with the claims professional throughout as well as advanced notice of any upcoming deadlines or significant events in the litigation.

**XIV. Billing Procedures**

See Appendix 5

Auditing

The Insurer reserves the right to conduct audits of law firms hired to represent the Insured to ensure quality of legal services and compliance with these billing procedures. Payment of any invoices and expenses by the Insurer does not constitute a waiver of auditing rights or related requests, such as for reimbursement. These audits may be conducted at your office or we may request that specific files and documentation be shipped to a different location. Expenses associated with the preparation of the files for the audit is not billable. Time sheets, pre-bills and billing summaries may be required as part of the audit. Audits may be conducted by the Company's employees or its designee. The Company recognizes the importance of conducting the audit process in a manner that does not compromise privileges, confidences or protections.

**XV. Alternative Dispute Resolutions (ADR)**

Where appropriate, Defense Counsel should look to utilize all appropriate alternative dispute resolutions to resolve cases. This is especially encouraged during the early stages of the matter where liability is clear.

**XVI. Code of Conduct**

Every lawyer is expected to observe all rules of law, including all applicable Rules of Professional Conduct. This also includes compliance with all applicable Fair Claims Practices Acts and Claims Administration Statutes. Defense Counsel shall be responsible for proper and adequate training of all associate lawyers and paralegals while performing their professional duties on behalf of the Insurer and/or its policyholders.

## APPENDIX 1

### **RETENTION AGREEMENT WITH MODEL FORM** *Draft standard letter to Defense Counsel in a tripartite state – No Reservations of Rights*

*[Defense Counsel]*

*[Address]*

Re: Claim No.:  
Insured:  
Claimant:  
Policy No.:

Dear *[Defense Counsel]*:

This letter is to confirm that Insurance Company (“Insurer”) has retained your firm to represent the common interests of it and its Insured, the ABC Company (“Insured”), in connection with the case noted above which Insurer has agreed to defend. Both the Insured and Insurer shall be deemed clients of your firm and all information shared between and among the parties shall be, and remain, privileged and confidential and shall be shared only among the parties, their employees and their confidential agents. Your firm will be reimbursed for the reasonable and necessary fees and costs incurred in the defense of the Insured subject to the terms and conditions of your firm’s Panel Counsel Agreement (“PCA”) with Insurer, including its Litigation Management and Reporting Guidelines. To the extent you do not have copies immediately available to you, you can access these Guidelines and report forms at [www.insurer.com](http://www.insurer.com). The undersigned shall be your assigned Claims Representative. Please contact the undersigned in advance in the event you believe, based upon your independent professional judgment, that a deviation from, or a modification of, the Guidelines is necessary under the particular facts and circumstances of your case.

Specifically, Insurer has agreed to the hourly rates set out in the schedule below for partners, associates and paralegals.

Name	Position	Hourly Rate

Please note that unless otherwise approved in advance Insurer shall expect that these will be the only personnel assigned to or billing on the case. Partner XYZ has been designated as Trial Counsel. The hourly rates noted shall be the rates your firm will charge for the duration of the case.

Pursuant to Insurer's Litigation Management and Reporting Guidelines, your first assessment of the case shall be due no later than \_\_\_\_\_; we expect your assessment to be accompanied by a case budget also in the form set forth in the Guidelines.

Please keep in mind that all demands for settlement shall be immediately directed to Insurer and the Insured.

For our records, we ask that you reaffirm the agreements your firm made in its PCA with Insurer, and acknowledge the terms and conditions of its retention in this particular case, by executing a copy of this letter below where indicated and returning it to the undersigned.

We thank you in advance for your cooperation and we look forward to working with you towards a successful resolution of this matter on behalf of the Insured and Insurer. Should you have any questions regarding any issue raised in this letter, please do not hesitate to call or to write.

Sincerely,

*[Claims Representative]*

CC: {The Insured}

BY: \_\_\_\_\_  
Firm Partner

## APPENDIX 2

### INITIAL EVALUATION AND LITIGATION PLAN - COVERAGE

**1. Administrative**

The Initial Evaluation and Litigation Plan shall include a discussion of the following administrative information:

- Date
- Claim number
- Case style/caption - this case
- Date of loss
- Firm's file number
- Claims Professional (contact information)
- Defense Counsel - this case (contact information)
- Name of each party and counsel - this case (contact information)
- Case style/caption - underlying action
- Defense Counsel - underlying action (contact information)
- Name of each party and counsel - underlying action (contact information)

**2. Key Points**

The Initial Evaluation and Litigation Plan should include the following key points:

The Underlying Action

- Named parties. If applicable, include a discussion of any actual or potential Conflicts of Interest in joint representation and any anticipated addition or deletion of parties.
- Facts. Include a discussion of plaintiff's allegations and the nature and source of any conflicting information.
- Damages. Include a discussion of plaintiff's claimed damages, including a discussion of whether plaintiff seeks punitive damages, any caps on damages, and whether attorney's fees can be recovered.
- Legal issues. In addition to the legal issues framed by the pleadings, include a discussion of any issues that have not been presented but which you anticipate.
- Defenses. If applicable, include a discussion of jurisdictional issues, immunities, comparative fault, mitigation, etc.
- Procedural history. Include a discussion of any counterclaims, cross-claims, and third-party claims; and whether the Policyholder's defense can or should be tendered to another party.

- Other available insurance. For each insurance policy, identify the Insurer and limits and state whether notice has been given.

#### This Matter

- Parties. If applicable, include a discussion of any actual or potential Conflicts of Interest in joint representation and any anticipated addition or deletion of parties.
- Claims Chronology.
- Relief sought.
- Legal issues. In addition to the legal issues framed by the pleadings, include a discussion of any issues that have not been presented but which you anticipate.
- Defenses.
- Counterclaims, cross-claims, third-party claims. If no such claims have been made, discuss whether you anticipate such a claim and whether such a claim can or should be asserted.
- Evaluation of the trial judge and other counsel in the case.
- Any Special legal problems or evidentiary issues.
- Evaluation of liability and exposure; strategy for resolution; and recommended activities.
  - Include a discussion of the venue (any alternative venues), jury pool, anticipated verdict range, strengths and weaknesses of each party's position, any aggravating circumstances, probability of success, and any other information that would be helpful to our assessment (i.e., recent jury verdicts in the venue). If additional information or investigation is required, discuss the recommended steps and time to obtain that information.
  - For UM/UIM cases:
    - Include a discussion of the potential exposure to the Company's layer of coverage, any policy language requiring alternative dispute resolution, and your recommendation as to whether the Company should seek enforcement or waiver of the language.
  - For coverage assignments:
    - Include an outline of the potentially applicable policy language and how the policy language has been interpreted under current case law.
    - If there is an underlying action, include a discussion of:
      - Whether the Company has a duty to defend.

- Whether the Company can in good faith refuse to defend.
- Whether a reservation of rights letter has been sent. If so, your evaluation of whether it is sufficient and any recommendation as to amending it. If not, your recommendation as to sending one.
- If a declaratory judgment action has not been filed, discuss your recommendation as to whether the Company should file such an action and an evaluation of the available venues.
- If the policyholder has filed a declaratory judgment action, include a discussion of the venue, whether the case can be removed to federal court, and your recommendation as to removal.
- If the policyholder has made an allegation of bad faith, include an evaluation of the merits of that claim and your recommendation as to how it should be handled (i.e., bifurcation).
- Is this a case that can or should be resolved early, before undertaking any significant activity? If so, discuss your recommendation as to early resolution (i.e., dispositive motion, settlement negotiations, ADR), including the timing, likelihood of success, and steps to achieve it.
- Is this a case that will require the use of one or more experts? If so, discuss your recommendation as to experts, including when to engage the expert and cost.
- Discuss the need for additional investigation, including surveillance and witness locates, and who will perform the investigation.
- Discuss anticipated written discovery, depositions, motions, and any court-mandated deadlines.
- Discuss your recommendation as to additional steps required to preserve electronically stored information (ESI) and the cost.
- Are there any fee-shifting statutes (i.e., offers of judgment) or contractual provisions? If so, discuss your recommendation as to pursuing this option, including the timing and steps required.
- Is this a case where you anticipate media interest? If so, discuss your plan to respond to media inquiries.

**3. Budget**

The Initial Evaluation and Litigation Plan shall include a budget of the estimated time and cost of the Key Points and activities discussed in the preceding section. If possible, the budget should include the estimated time and cost to prepare for and attend trial.

## **APPENDIX 3**

### **INITIAL EVALUATION AND LITIGATION PLAN - DEFENSE**

#### **1. Administrative**

The Initial Evaluation and Litigation Plan shall include a discussion of the following administrative information:

- Date
- Claim number
- Case style/caption
- Date of loss
- Firm's file number
- Claims Professional (contact information)
- Defense Counsel (contact information)
- Name of each party and counsel (contact information)

#### **2. Key Points**

The Initial Evaluation and Litigation Plan should include the following Key Points:

- Named parties. If applicable, include a discussion of any actual or potential Conflicts of Interest in joint representation and any anticipated addition or deletion of parties.
- Underlying facts and plaintiff's allegations. If applicable, include a discussion of the nature and source of any conflicting information.
- Plaintiff's damages. If applicable, include a discussion of medical expenses, lost wages, property damage, pre-existing medical conditions, permanent impairment or disability, whether plaintiff seeks punitive damages, any caps on damages, and whether attorney's fees can be recovered.
- Legal issues. In addition to the legal issues framed by the pleadings, include a discussion of any issues that have not been presented but which you anticipate.
- Available defenses. If applicable, include a discussion of jurisdictional issues, immunities, comparative fault, mitigation, etc.
- Counterclaims, cross-claims, third-party claims. If no such claims have been made, discuss whether you anticipate such a claim and whether such a claim can or should be asserted on behalf of the Insured or the Company.
- History of settlement negotiations and settlement value. If a settlement demand has not been made or settlement negotiations have not occurred, discuss your recommendation as to soliciting an early settlement demand and engaging in early settlement negotiations.

- Evaluation of liability and exposure. Include a discussion of the venue (any alternative venues), jury pool, anticipated verdict range, strengths and weaknesses of each party's position, any aggravating circumstances, probability of success, and any other information that would be helpful to our assessment (i.e., recent jury verdicts in the venue). If additional information or investigation is required, discuss the recommended steps and time to obtain that information.
- Evaluation of the trial judge and other counsel in the case.
- Any Special legal problems or evidentiary issues.
- Other available insurance. For each insurance policy, identify the Insurer and limits and state whether notice has been given.

**Strategy for resolution and recommended activities.**

- Is this case one that is subject to mandatory arbitration? If so, discuss your recommendation as to seeking enforcement of or waiving arbitration. Also discuss the arbitration forum, selection of arbitrators, rules, and cost.
- Is this case one that can be removed to federal court? If so, discuss your recommendation as to removal.
- Is this case where the defense can or should be tendered to another party? If so, discuss your recommendation as to tendering the defense.
- Is this a case that can or should be resolved early, before undertaking any significant activity? If so, discuss your recommendation as to early resolution (i.e., dispositive motion, settlement negotiations, ADR), including the timing, likelihood of success, and steps to achieve it.
- Is this a case that will require the use of one or more experts? If so, discuss your recommendation as to experts, including when to engage the expert and cost.
- Discuss the need for additional investigation, including surveillance and witness locates, and who will perform the investigation.
- Discuss anticipated written discovery, depositions, motions, and any court-mandated deadlines.
- Discuss the Insured's policies and procedures for document retention of paper and electronic documents, including your recommendation as to additional steps required to preserve electronically stored information (ESI) and the cost.
- Are there any fee-shifting statutes (i.e., offers of judgment) or contractual provisions? If so, discuss your recommendation as to pursuing this option, including the timing and steps required.
- Is this a case where it would be beneficial to coordinate with other Defense Counsel? If so, discuss your recommendation, including whether to enter into a joint defense agreement.
- Is this a case where you anticipate media interest? If so, discuss your plan to respond to media inquiries.

**3. Budget.**

The Initial Evaluation and Litigation Plan shall include a budget of the estimated time and cost of the Key Points and activities discussed in the preceding section. If possible, the budget should include the estimated time and cost to prepare for and attend trial.

## APPENDIX 4

### SAMPLE PHASED BUDGET

#### PHASE I - Initial Stage

A. Estimated time

1. Initial file review, analysis, contact with/report to client/Insured \_\_\_\_\_
2. Legal research/analysis \_\_\_\_\_
3. Answer/affirmative defenses \_\_\_\_\_
4. Other pleadings/motions \_\_\_\_\_
5. Communications with attorneys/others \_\_\_\_\_
6. Paralegal time \_\_\_\_\_

B. Estimated costs

1. Travel (time and expenses) and parking \_\_\_\_\_
2. Court costs \_\_\_\_\_
3. Miscellaneous costs (copies, reports, investigators, etc.) \_\_\_\_\_

#### PHASE II - Discovery

A. Estimated time

1. Prepare written discovery (interrogatories, requests for production) \_\_\_\_\_
2. Respond to plaintiff's written discovery \_\_\_\_\_
3. Communication with/report to client/Insured \_\_\_\_\_
4. Communication with attorneys/others \_\_\_\_\_
5. Fact depositions:
  - a. estimated number of depositions \_\_\_\_\_
  - b. review and preparation time \_\_\_\_\_
  - c. attendance at deposition \_\_\_\_\_
  - d. review transcripts/exhibits \_\_\_\_\_
6. Expert depositions:
  - a. interview/furnish data to experts \_\_\_\_\_
  - b. review/submission of expert reports \_\_\_\_\_
  - c. review adverse expert reports \_\_\_\_\_
  - d. prepare defense expert for deposition \_\_\_\_\_
  - e. attend defense expert deposition \_\_\_\_\_
  - f. prepare for plaintiff's expert deposition \_\_\_\_\_
  - g. attend plaintiff's expert deposition \_\_\_\_\_
  - h. analyze/report on expert depositions \_\_\_\_\_
  - i. Communication with attorneys/others \_\_\_\_\_

- 7. Paralegal time \_\_\_\_\_
- 8. Discovery Motions \_\_\_\_\_
  - a. preparation and research of motions \_\_\_\_\_
  - b. trial of discovery motions \_\_\_\_\_
  - c. communication with attorneys/others \_\_\_\_\_
  - d. communication/report to client/Insured \_\_\_\_\_

B. Estimated Costs

- 1. Expert fees/expenses \_\_\_\_\_
- 2. Travel time/costs \_\_\_\_\_
- 3. Deposition transcripts \_\_\_\_\_
- 4. Copy/exhibit/record costs \_\_\_\_\_
- 5. Court costs \_\_\_\_\_
- 6. Miscellaneous costs \_\_\_\_\_

**PHASE III - Alternative Dispute Resolution/Mediation/Settlement**

A. Estimated Time

- 1. File review/preparation of position paper \_\_\_\_\_
- 2. Legal research/analysis \_\_\_\_\_
- 3. Attendance at mediation \_\_\_\_\_
- 4. Communication with client/Insured \_\_\_\_\_
- 5. Paralegal time \_\_\_\_\_

B. Estimated Costs

- 1. Mediation cost \_\_\_\_\_
- 2. Travel/parking \_\_\_\_\_
- 3. Miscellaneous costs \_\_\_\_\_

**PHASE IV - Pre-Trial and Trial**

A. Estimated Time

- 1. Legal research and opinions \_\_\_\_\_
- 2. Preparation of dispositive motions & memoranda \_\_\_\_\_
- 3. Preparation of Pre-Trial Order, witness & exhibit lists \_\_\_\_\_
- 4. Attend Pre-Trial Conference \_\_\_\_\_
- 5. Communication to Insured/client \_\_\_\_\_
- 6. Communication with attorneys/court/others \_\_\_\_\_
- 7. Preparation of jury charges and instructions \_\_\_\_\_
- 8. Preparation of witnesses & exhibits for trial \_\_\_\_\_

- 9. Trial attendance \_\_\_\_\_  
(Estimated number of days - \_\_\_\_)
- 10. Preparation of post-trial memoranda \_\_\_\_\_
- 11. Post trial motions \_\_\_\_\_
- 12. Paralegal time \_\_\_\_\_

B. Estimated Expenses

- 1. Subpoenas \_\_\_\_\_
- 2. Exhibit/copy costs \_\_\_\_\_
- 3. Expert fees/costs \_\_\_\_\_
- 4. Jury cost \_\_\_\_\_
- 5. Travel/parking \_\_\_\_\_
- 6. Court costs \_\_\_\_\_
- 7. Witness costs/expenses/fees \_\_\_\_\_

**PHASE V - Appeal**

A. Estimated Time

- 1. Preparation of Motion/Petition for appeal \_\_\_\_\_
- 2. Review transcript and exhibits \_\_\_\_\_
- 3. Legal research \_\_\_\_\_
- 4. Prepare Appellate Brief \_\_\_\_\_
- 5. Argument of appeal \_\_\_\_\_
- 6. Communicate with/report to client/Insured \_\_\_\_\_
- 7. Paralegal time \_\_\_\_\_

B. Estimated Expenses

- 1. Cost of transcript and exhibits \_\_\_\_\_
- 2. Court/filing costs \_\_\_\_\_
- 3. Copy costs of briefs \_\_\_\_\_
- 4. Travel/parking \_\_\_\_\_
- 5. Miscellaneous expenses \_\_\_\_\_

## APPENDIX 5

### BILLING PROCEDURES

#### A. Hourly Rate

Billing is to be at the approved hourly rate.

#### B. Defense Counsel Billing Format

The billing format must include the following:

##### 1. Heading

The first page of the bill must be prepared with entries stating:

- the caption
- the law firm's IRS number
- the name of the Insured
- the claim number
- the time period for which the bill applies
- identification of the attorney, paralegal/law clerk whose initials appear on the bill

##### 2. Body

The bill must be prepared with entries showing:

- date the work was performed
- initials of the person providing the service
- description of the work performed (single activities)
- the actual time in 1/10<sup>th</sup> of an hour increments

##### 3. End of Bill Summary

The bill must include:

- full name of each timekeeper
- level of each timekeeper (i.e. partner, associate, paralegal)
- hourly rate for each timekeeper
- total hours and total amount charged for each timekeeper during the billing period
- total number of hours worked by each person
- total billed to date on the file including current billing
- any payments received on the case
- balance due on the file

Note that "block billing" (grouping multiple activities under a single time charge greater than 1/10<sup>th</sup> of an hour) is prohibited.

**C. Ancillary Legal Costs**

Each firm is requested to advance the following ancillary legal costs:

- Court Costs
- Telephone Calls/Bills
- Court Reporters
- Subpoena Services
- Photocopy Services
- Service Fees
- External Messenger Services
- Legal Research Services
- Expert Witness Fees less than \$2,500.

Any invoice for any disbursement in excess of \$100 must be included with the bill.

**D. Non-Reimbursable Costs**

- Intra-office conferences
- Attendance by more than one attorney at any deposition, conference, trial or other hearing without prior approval from
- Any file review done when the file is transferred to a new attorney
- Research in excess of three hours, unless previously authorized
- *Lexis, Westlaw* or other electronic or computer assisted research
- Continuing education for any personnel
- Administrative services including secretarial and clerical functions. These tasks include, but are not limited to:
  - Opening mail
  - Acknowledgement letters
  - New file set up
  - Maintenance of office and attorney calendars
  - Transcribing, copying, posting, faxing, emailing, and inserting documents into and retrieving documents from the file
  - Preparing form letters and pleadings
  - Communicating with copy services, interpreters, court reporters, medical offices or other law offices for the purpose of scheduling
  - Scheduling depositions, medical exams or other appointments
  - In-house messenger service
  - In-house photocopying expenses in excess of \$.10 per page. Number of pages must be included on the invoice.
  - Routine recurrent tasks or expenses otherwise considered as overhead such as: telephone bills, word processing and faxing

- FedEx Overnight Service unless specific time constraints are required. If these items are billed, an explanation must be provided.
- Mileage in excess of the current IRS rate for mileage reimbursement
- Insurer agrees to pay 50% of the billing rate for all travel time in excess of 1 hour. Unless otherwise approved, Insurer will not pay for travel time of less than one hour
- Charges for preparation of bills and/or negotiating disputes over bills
- Charges for facsimile transmissions other than the appropriate long distance or local telephone charges for the transmission
- Normal postage
- Telephone bills (except long distance)
- Meals/airfare/hotel charges unless pre-approved. Out of area overnight or day travel should be at the lowest available fare booked 14 days or more in advance, unless notice is not received within this time frame. It is expected that Defense Counsel will seek the best rates for air travel, hotel, car rental and meals. Entertainment, dry cleaning or other non essential charges will not be reimbursed. Receipts must be submitted for all travel expenses.

**E. Time Frames for Billing**

Unless otherwise approved, interim billing is to be provided at the earliest of the following dates:

- 90 days from receipt of the assignment
- 90 days from last invoice date.
- When total outstanding charges reach or exceed \$15,000.
- When expenses advanced by firm reach or exceed \$5,000.