

**DEFENSE RESEARCH INSTITUTE
RECOMMENDED CASE HANDLING GUIDELINES FOR INSURERS**

I. PREFACE

Philosophy

[Insurer] expects to work with the Firm and the insured to achieve the best result for the insured in an efficient and cost-conscious manner consistent with the Firm's ethical obligations. Nothing contained herein is intended to nor shall restrict Counsel's independent exercise of professional judgment in rendering legal services for the Insured or otherwise interfere with any ethical directive governing the conduct of counsel.

II. CASE DEVELOPMENT

An effective and strategically sound legal defense is the responsibility of counsel and [insurer] and should be developed in a timely manner.

A. A goal is to identify, timely, those claims for which there is liability, and to discuss settlement opportunities early. The activities necessary to defend a given claim and bring it to appropriate resolution should be addressed early and the steps necessary to achieve that resolution should be jointly agreed upon as between the [Insurer] and defense counsel.

B. An early resolution of lawsuits is desirable and the use of alternative dispute resolution is encouraged.

C. If defense counsel is involved in settlement negotiations, settlement authority must be obtained from [Insurer] and requests for authority should be made timely.

III. STAFFING PHILOSOPHY

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

To achieve the best efficiency and value, the role and responsibilities of the staff members should be clearly defined and appropriate to each individual's qualifications, level of experience and billing rate. Defense counsel should delegate work to subordinates wherever possible to achieve efficiency and cost-effectiveness without compromising quality.

IV. REPORTING REQUIREMENTS

A. Reports

Unless otherwise requested, reporting is required for three events: Acknowledgment, Initial Evaluation, and Significant Developments. Reports should be provided to both [insurer] and [insured].

1. Acknowledgment:

Upon receipt of a new case, counsel should send an acknowledgment letter regarding receipt of the file and designating the legal team assigned to the case. Any matters of immediate concern or information that may result in early resolution of the case should be addressed in the acknowledgment letter.

2. Initial Report:

Within _____ days after receipt of the assignment, counsel should send an initial report with the following information:

- a. A summary of the allegations in the complaint, the factual basis for the litigation, a summary of the information developed during the preliminary investigation and a preliminary evaluation of liability and damages.
- b. A Litigation Plan providing the following:
 1. Identify each significant activity counsel proposes to initiate. (e.g., investigation, motion, discovery, legal research, etc.).
 2. Identify discovery and motions which have been or are likely to be initiated by other parties.
 3. Estimate the completion date for each activity.
 4. State the estimated expenses of each activity.
- c. Discussion of the potential for early disposition of the case by settlement, and recommendations with respect to arbitration, mediation or direct settlement negotiations.
- d. Discussion of the potential success of dispositive motions prior to, or after, the commencement of discovery and when motions to dismiss or for summary judgment are appropriate.
- e. An estimate of the probable trial date.

3. Significant Development Report:

Defense counsel should communicate and apprise of significant developments as soon as practical. This will include reports on summaries of depositions, and pre-trial reports, and if applicable:

- a. Settlement options and/or dispositive motions.
- b. Updated evaluation of the client's liability and damages.
- c. An updated Litigation Plan.
- d. Trial Report: If it is anticipated the case will proceed to trial, 30 days before the scheduled trial date, a detailed report should be submitted, detailing the issues and an analysis of same and any other information requested by [Insurer].

B. Documentation

Reporting shall not include copies of the following documents, unless specifically requested:

1. Research Memorandum, Motion Papers and Legal Briefs;
2. Deposition Transcripts;
3. Expert Reports;
4. Medical Reports.

Counsel should provide copies of all pleadings and amended pleadings filed by or against the party whom you are defending and Releases and Orders of Dismissal for Final Judgments. Counsel will consult with [Insurer] on the appropriate means of communication, whether by e-mail, fax or regular mail to avoid duplication.

Counsel should comply with all reasonable requests for information and documents, provided however, that any documents or information that are privileged or intended by the insured to be confidential shall not be disclosed, absent consent from the Insured.

C. Consultation

After submission of the Initial Report, counsel welcomes discussion with and input and comment from the insurer. Counsel and [Insurer] will endeavor to agree on the proposed activities outlined in the Litigation Plan. However, in the event of disagreement, the final decision will remain the independent professional judgment of defense counsel.

V. BILLING

A. Billing Procedure

1. Frequency of Billing
 - a. Bills should be issued at intervals to be agreed upon by counsel and [Insurer].

2. Billing Format

- a. **Heading.** The first page of the bill must state: (a) the firm's IRS number; (b) the caption of the case; (c) the name of the insured; and (d) the claim number.
- b. **Body.** The bill must be prepared with daily entries showing: (a) the date the work was performed; (b) the initials of the person providing the service; (c) a description of the work performed (single activities); and (d) the actual time in tenths of an hour.
- c. **End of Bill Summary.** The bill must include: (a) the full name of each attorney/paralegal; (b) the status of each timekeeper (i.e., partner, associate, paralegal); (c) the hourly rate of each timekeeper; and (d) the total hours and total amount charged for each timekeeper during the billing period.
- d. **Task Codes.** Task coding is not required, unless requested. Where requested, the uniform billing codes as currently endorsed by the American Bar Association shall be used.

B. Charges for Service

1. **Time Charges. Actual Time in One-Tenth Increments.** All charges for services by attorneys and paralegals must be recorded daily based upon their actual time in one-tenth hour increments.
2. **Single Entry Timekeeping.** Unless otherwise directed, the time for each activity should be separately stated. Grouping multiple activities under a single time charge greater than one-tenth of an hour ("block billing") is not acceptable, absent authorization from the [Insurer].
3. **Information Descriptions of Services.** Descriptions of services should inform of the nature, purpose or subject of the work performed, and the specific activity or project to which it relates.
4. **Compensation.** Counsel should consult with [Insurer] regarding any increase in the rate of compensation.
5. **In-Firm Conferences.** Where counsel consults with another attorney in the firm to obtain specific advice or counsel on substantive or procedural aspects of the case that result in a more effective defense, said reasonable and necessary conference time will be reimbursed, provided that sufficient detail of the subject of the communication is set forth to demonstrate its relevance and value.
6. **Multiple Attendance.** Counsel should consult with insurer where it is anticipated that more than one attorney's attendance is necessary at trial, court appearances, meetings, depositions, witness interviews, inspections and other functions.

7. Depositions. Counsel should consult with [Insurer] before initiating depositions other than that of the plaintiff(s), the insured, and other depositions already approved in the initial Litigation Plan or supplement thereto and shall advise the [Insurer] of upcoming depositions initiated by other parties that Counsel plans to attend.
8. Legal Research. Counsel should consult with Insurer before undertaking a legal research project requiring over three hours of research. Copies of all research memoranda shall be provided to [Insurer] upon request.
9. Motions. Counsel should consult with [Insurer] before filing any motions not previously identified and approved in the initial Litigation Plan or supplement thereto.
10. Revising Standardized Forms/Pleadings. Only the actual time spent in personalizing standardized pleadings, documents, or discovery responses or requests to the case at hand should be billed, rather than the time originally spent drafting standard language.

C. Disbursement

1. Internal Expenses. [Insurer] shall advise counsel of its guidelines as to reimbursement of internal expenses.
2. External Expenses. Charges for service by outside vendors will be reimbursed at their actual cost. Expenses over \$_____ may be forwarded to [Insurer] for payment. Disbursements should be itemized on the law firm's statement with the following information, unless back-up documentation is provided: (a) the name of the vendor; (b) the date incurred; and (c) a specific description of the expense. Where back-up documentation is provided, the law firm statement need only set forth a description of the expense and amount incurred.
3. Travel Expenses. Counsel should consult with [Insurer] prior to incurring travel expenses. [Insurer] will reimburse defense counsel for reasonable travel expenses. All expenditures of \$25 or more must be supported with receipts attached to the law firm's statement.
4. Professional Services. Counsel should consult with [Insurer] prior to incurring expenses for experts, consultants, investigators, temporary attorneys or outside paralegals, or other professional services.
5. Secretarial and clerical activities. Secretarial and clerical work is not billable to [Insurer]. As examples and not as a complete list, secretarial and clerical work includes receipt and distribution of mail, new file set up, maintenance of office and attorney calendars, transcribing, copying, posting, faxing, e-mailing, inserting documents into and retrieving documents from the file, maintaining order in the file, stamping documents, tabbing sub-files and assembling materials.

VI.

BILL AND FILE REVIEW

[Insurer] reserves the right to review all charges for services and disbursements pertaining to litigation, including without limitation all charges paid by the insured with respect to such litigation, whether pursuant to self-insured retentions or deductibles under [Insurer's] insurance policies or otherwise. [Insurer] reserves the right to conduct audits and to review the defense file and/or defense bills, consistent with the defense attorney's ethical obligations, and in a manner that will not compromise the attorney-client or work product protection accorded material in the file or communications by and between counsel, the client and [Insurer] or otherwise interfere with any ethical directive governing the conduct of counsel. Counsel agrees to comply with all reasonable requests for information and documents, provided that such documents or information are not privileged or intended by the insured to be confidential. In such instance, the [Insurer] must obtain the consent of the Insured. [Insurer] fully reserves all rights to decline to pay or to seek reductions and/or refunds with respect to charges that fail to comply with the requirements set forth herein, and which are not fully explained or documented by the firm after reasonable inquiry. The [Insurer] shall allow the law firm to appeal any declination of payment by [Insurer]. [Insurer] agrees to pay the undisputed portion of bills received from Counsel Counsel within _____ days.

This is an example of case handling guidelines which promotes uniformity in reporting and billing and effective and efficient case management, consistent with the defense attorney's professional responsibilities. Nothing contained herein constitutes or shall be construed as a standard of care.
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