

# Litigation Management Guidelines

## Introduction and Philosophy

Argo Pro Claims ("Argo") values the relationships we have with legal counsel. Our primary objective is to retain attorneys who believe as we do: An acceptable legal defense involves protecting the interests of the client through prompt evaluation and early resolution of a case. This document outlines the fundamental expectations for effective interaction with defense counsel on litigated claims.

Legal counsel that is retained by us is expected to support our commitment we make to our policyholders of providing a quality work product on a cost-effective basis. By agreeing to provide legal services for litigated claims, legal counsel is also agreeing to comply with the Guidelines outlined in this document. In an effort to limit the length of these Guidelines, not every aspect of the litigation process is addressed. These Litigation Management and Billing Guidelines have been developed to support proactive strategies to achieve the right case specific outcomes. It is anticipated that through our ongoing collaboration and communications with legal counsel, we will have the opportunity to discuss and agree upon any expectations that have not been expressly included in this document. Further, Argo also reserves the right to amend these Guidelines at any time and intends to provide legal counsel with thirty (30) days prior written notice.

Argo requests all correspondence and attachments be provided in an electronic format. Paper documentations and attachments may be acceptable in some limited circumstances, with the prior approval of the claims professional. Any of correspondence and/or attachments that are issued by legal counsel is also required to include the name of the named insured and the applicable claim number.

## Conflict of Interest

At the time that legal counsel is contacted by a claims professional for the purpose of making a legal representation assignment, legal counsel is required to advise the claims professional of the existence of any potential conflict of interest involving legal counsel or his/her law firm. You should consult with the claims professional regarding the legal status of the Argo Group US, Inc. affiliated entities. Argo will **not** pay for professional fees or expenses related to conflicts checks or retention issues. Any conflict that becomes apparent during your handling of the assigned case should be reported promptly to the claims professional who is responsible for managing the case. An attorney's continued representation after the identification of an apparent conflict requires the claims professional's written approval and, possibly, also the insured's. Any waiver of conflict of interest by a claims professional must also be signed by the claims professional's manager.

## Reporting Requirements

### Suit Acknowledgement

Issuance of a written suit acknowledgement to the claims professional is required within **5 days** of an attorney's receipt of assignment. The assigned attorney will contact and meet with the client/insured for a discussion of the lawsuit and identification of relevant defenses within **30 days** of assignment.

If suit papers are served, the attorney must notify the claims professional within **10 days** with confirmation of proper service, venue, and timeliness of filing.

The retained attorney will be responsible for the work, key discovery, and/or status reporting to the claims professional and the insured. The handling of the matter cannot be transferred to a different attorney without **prior written approval** from the claims professional.

The use of "Contract Attorneys" or "Contract Professionals" to provide legal and/or administrative services requires **prior written approval by an Argo claims manager**.

All correspondence should be electronically sent to the claims professional and if directed by the claims professional, a copy of such correspondence should be sent to the named insured and/or an excess insurer(s) with copies to your client and any excess carriers.

### **Initial Strategic Planning Conference Call**

As soon as possible, but no later than **30 days** after receipt of assignment, the claims professional, the attorney, and if necessary, the named insured should participate in an initial strategic planning conference. The focus of this conference is to discuss and plan the litigation strategy that is expected to result in the resolution of the matter, as soon as reasonably practical, whether by settlement or litigation. As a result of this conference, a time and action plan should be developed with the responsibility for performing the identified litigation action steps assigned to either the claims professional or the attorney.

### **Initial Case Analysis**

Defense Counsel will develop a strategic and sound analysis of liability and evidence supporting the causes of action and defenses in the litigation. Defense analysis should include: (1) defense counsel's preliminary investigation findings within **60 days** from their retention including summaries of interviews with key witnesses and defendants and determinations from document analysis, (2) potential third party sources of liability and indemnification, (3) loss causation and materiality, (4) preliminary damage estimates, damage reports and expert testimony and reports, (5) any facts or case developments that may affect Argo or its insured's interests in the litigation, (6) evaluation of venue, law & liability, (7) evaluation of settlement potential, (8) action plans (claims professional and attorney).

### **Litigation Plan and Budget**

Within **60 days** after defense counsel has been retained, counsel, the insured and insurer shall agree to a flexible concise Litigation Plan and budget. Argo reserves the right to question and ultimately reject fees and costs which do not conform to the plan and budget. Any material changes to the litigation Plan and Budget shall be approved by all parties in writing. All motion practice not specifically contemplated by the Litigation Plan should be proposed in writing with a separate budget including costs.

### **Reporting**

Defense counsel should report to Argo at regular intervals. Status reports and follow-up strategic planning should be provided at minimum every **90 days** and should contain scheduled major events including planned completion of litigation tasks, liability assessment, defense tactics, and risks. Written or email reports including documentation should be provided to the insurer as it is obtained. Deposition transcripts of key witnesses and experts shall be provided. Deposition summaries should be included with the transcripts. Defense counsel shall provide Argo with a comprehensive pre-trial report **60-90 days** prior to the scheduled trial date, including any expected pre-trial motions, jury composition, assessment of the judge, and results of similar cases.

Revised reports should include, but are not limited to, the following:

- Completed discovery and a brief analysis on the impact of the insured's potential liability and the claimant's/plaintiff's damages
- An updated litigation timeline and action plan
- Identification of approaching deadlines for mediation, arbitration, or trial and the preparation that is being done in anticipation of such deadlines
- The identification of all settlement demands/offers

- Any other relevant issues pertaining to the matter
- Description and implication of any settlement statutes that are applicable in the jurisdiction where the case is pending

The following should be reported immediately to the claims professional: (1) amendment or consolidation of pleadings and appointment of lead plaintiff and counsel, (2) court scheduling orders, (3) material investigation findings and discovery results, (4) scheduled settlement and mediation conferences, and trial dates, (4) results of hearings, motions, or appeals, (5) changes in the status or introduction of any party to the litigation including judges or magistrates.

## **Motion Practice**

A discussion of the recommended motion with approval from the claims professional is required prior to an attorney engaging in any motion practice. The fact of approval and the name of the claims professional giving approval must be included in the invoice when billing for the motion. It is required that the attorney provide the claims professional with information about the purpose of the motion, the chance for success, the time to be expended in preparation of the motion, and who will prepare and argue it. Motion and pleading practice should be used strategically, primarily where there is an opportunity to leverage liability and/or damages, or to preserve an issue for appeal. Motions for Summary Judgment and Motions to Dismiss should always be considered and, if appropriate, filed at the earliest opportunity.

Approval from the claims professional is required prior to filing any appeal, including interlocutory appeals. The fact of approval and the name of the claims professional giving approval should be included in your invoice.

## **Documentation**

The claims professional is to be provided electronic copies of all **significant** pleadings, motions, briefs and memoranda in support thereof. It is also expected that the attorney will send the claims professional any information or documentation that will support the claims professional's evaluation of all relevant aspects of the litigation.

Such documentation includes, but is not limited to, the following:

- Petitions/Complaints and Answers
- Cross-Complaints and Answers
- Counterclaims and Answers
- Third-Party Petitions/Complaints and Answers
- Demurrers, responses, and replies
- Motions to Dismiss, responses, and replies
- Motions for Summary Judgment, responses and replies, Motions to Compel, responses and replies
- Motions to Consolidate, responses and replies
- Motions to Bifurcate, responses and replies
- Answers to Interrogatories and Admissions
- Copies of all settlement communications
- All court Orders
- Copies of any and all insurance policies
- Deposition Narratives

If an attorney is uncertain as to the extent of documentation that is to be provided to the claims professional, he or she should contact the claims professional prior to providing extensive documentation in lieu of a brief narrative summary of the contents of the documentation.

## **Legal Research**

Because an attorney is assigned to a case based upon expertise in the areas of the law that are applicable, he or she is expected to be knowledgeable on all aspects of the relevant case law. The

time and expense that is incurred by an attorney or a law firm for the performance of routine research is, therefore, not billable, as it is considered part of the expertise for which the attorney was hired. It is not our intention to discourage you from relying upon legal research when necessary, but in order to confirm its necessity, the claims professional is required to provide you with a written **approval prior** to the performance of any legal research (manual or automated) in excess **ten (10) hours**.

Documentation of the approval and the identity of the person giving approval must be stated on the item in the invoice when billing for the research. Written approval should be available for review upon request.

Lexis/Westlaw research is analogous to the maintenance of a law library, and therefore, part of a law firm's general overhead expense; therefore, charges for electronic database fees in addition to actual research time charges will not be reimbursed. Where circumstances enable you to utilize your firm's data or brief-bank for updating previously researched material, we expect to be charged for only the time to perform the updated research. A copy of all research work-product in the form of memoranda, etc., should be submitted to the claims professional upon completion.

When recommending research, an explanation of what effect the research will have on the strategy for the matter should be provided to the claims professional. A summary of the required research time should include the amount of time to complete the research and the research method. Unless the claims professional has specifically directed otherwise, all legal research must support the strategic plan previously developed for that case.

### **Use of Experts**

The claims professional's written **prior approval** is required before an attorney may retain any experts, consultants, independent professionals, or investigators. Written prior approval from the claims professional's manager or supervisor is required if more than damage or liability expert is retained.

### **Communications and Settlement Actions**

Frequent communication with us and your client is essential to bringing any matter to a resolution. However, correspondence that is unnecessary and does not support an agreed upon strategy is unacceptable.

We encourage you to copy your client on all correspondence, as well as invite them to any conference calls or strategy meetings. Your client (the named insured) must be notified immediately of all offers and demands. Additionally, the client should be informed of and in attendance at mediations and trials.

We expect that the primary method of communication between Argo representatives and counsel will be by telephone. Email communication is appropriate for forwarding documents and attachments. All communications should support the goal of effectively resolving the case at the earliest reasonable date. The claims professional should be notified by phone of any other significant discovery issues as they arise during the course of the litigation process.

We encourage early exploration of settlement possibilities, consistent with the exposure. We encourage the use of mediation where appropriate; however, we still expect every reasonable effort to be made to discuss settlement with the claimant and/or opposing party prior to relying upon a mediator's services.

Counsel shall advise the insurer of all settlement demands, provide sufficient advance notice of all settlement conferences, trial dates upon scheduling and other critical dates when as received by defense counsel. Defense counsel shall make timely requests for settlement authority and orderly scheduling of settlement drafts. Counsel shall obtain Argo's consent prior to discussing specific settlement amounts or ranges with plaintiffs' counsel and prior to committing to a settlement payment date. The insurer's consent must be obtained before taking a jury verdict.

## **Billing Guidelines**

### **Hourly Rates**

We must approve hourly rates that are to be invoiced for any legal matter that we assign to an attorney. Unilateral increases are unacceptable and any rate increases require the **prior written approval of claims management**. Requests for rate increases will only be considered at the beginning of a calendar year and can only be approved by a **Claims Operation's Head of Claims**. Requests should be submitted to the Claims Operation's Head of Claims **90 days** prior to the intended effective date. On matters involving "duty to defend" policies any rate increase shall apply only to those case assignments made after the rate increase has been approved by us.

### **Law Firm Overhead**

We consider overhead items to be a part of the normal operating expense associated with operating a professional business. Overhead costs should be included in the hourly rates and are not to be separately billed as an expense item. Overhead includes, but is not limited to the following items:

- Fax and scanning costs
- Telephone charges
- Postage
- Courier/Fed-Ex services, except in an emergency situation not created by the law firm
- Internet Access
- Computerized legal research database fees such as Westlaw or Lexis
- Legal periodicals, digests, or treatises
- Secretarial, clerical, or administrative functions including, but not limited to: docketing, checking court calendars, serving/filing documents, e-filing, calendaring, routine communications with court personnel, searching court files, routine scheduling, file organization, indexing and processing bills, enclosure letters, filing, opening and closing of files, preparation of budgets, receipt and distribution of mail, picking up and/or delivery of documents, collating and tabbing file materials, processing vendor bills, inventorying, filing and copying documents, and making travel arrangements
- Word processing/document production, bates-stamping and binders
- Scanning, downloading, uploading and database entry activities are clerical and non-billable.
- CD's, DVD's or any inserted data storage used for document reproduction or storage
- Local travel (**50 miles or less**) per round-trip
- Rent, utilities, supplies
- Production/review of legal invoices
- Education and training
- Interoffice conferences, unless for strategic purposes and only one attorney's time is billed
- Document proofreading and editing
- File reviews for performance management or staffing purposes
- Routine file review, without a stated substantive purpose
- Intra-office conferences where the communication is for the giving or receiving of assignments, or for training, which is considered a part of the firm's administrative overhead
- Creation of intra-office memoranda/memoranda to file

## **Multiple Attendance**

Unless **approved in writing by a Claims Manager or a Claims Operation's Head of Claims** only **one** timekeeper, usually the retained partner, should attend trial, court appearances, meetings, depositions, witness interviews, inspections, conference calls and other functions. Approval for multiple timekeepers must be indicated on the invoice including the name of the Claim Manager or Head of Claims granting approval.

## **Paralegal Tasks**

We will not pay for secretarial work performed by paralegals or for paralegal work performed by attorneys. If no paralegal billing rate has been entered and approved for the firm, we will incorporate a paralegal rate of **\$75 per hour** in the event of an attorney billing for paralegal tasks. Common paralegal functions include, but are not limited to:

- Prepare Interrogatories (Form, Pre-Printed)
- Prepare Expert Interrogatories (Form)
- Summarize Answers to Interrogatories
- Prepare Record Subpoenas and follow-up
- Prepare Authorization to Secure Records and follow-up (medical, tax, IRS, employment, union)
- Prepare Notice to Produce
- Summarize Depositions (line summary/digest)
- Summarize Employment Records
- Summarize Medical Records
- Prepare Trial Notebooks
- Notices of Deposition

Time billed for preparation of entries of appearance and demand for jury will be reimbursed at the paralegal rate.

## **Billing Frequency & Legal Bill Review**

Invoices should be **submitted quarterly** from the date of receipt of the assignment. Please do not use a standard quarterly billing cycle, i.e., submitting bills only in January, April, July and October.

All work must be billed within one year of the actual date the work was performed. Any charges received beyond **180 days** will not be honored.

We reserve the right to perform a legal bill review of any invoice, either by ourselves or by Bottomline Technologies. We may perform an on-site legal bill review or electronic review, consistent with the attorney's ethical obligations, and in a manner that will not compromise the attorney-client or work-product privilege protection applicable to material in the file or communications by and between counsel, the client (if other than a claims professional, the claims professional's manager or supervisor or the Claims Operation's Head of Claims).

## **Expenses**

Subject to the requirements appearing below, the actual cost of a necessary expense is to be billed on the invoice, appear as an itemized expense, and be supported by a copy of the receipt:

- **Photocopies** will be reimbursed at no more than **\$ .10 per page** or the actual charge of a copy service. We prefer that you send high volumes of copying to more economical outside copy services. Price per page and number of copies must be noted on the invoice. We will approve outside copy service charges between **\$ .03 and \$ .08 per page** and all documentation from outside services validating the charges must be available for audit. We

will allow up to **\$.20 per page** for color copies when required.

- **Messenger and delivery services** will not be reimbursed if they are incurred due to a rush caused by an attorney or its law firm. Under other circumstances, the actual messenger charges incurred are to be billed and supported with the receipt for such charges.
- **Expenses greater than \$100** must be documented with itemized vendor receipts. Credit card receipts are unacceptable.
- **Individual expenses exceeding \$500** must be discussed in advance with the claims professional. The fact of approval and the name of the individual giving approval must be noted on the invoice. Any expense can be forwarded directly to the claims professional for direct payment to the vendor. Expenses exceeding \$500 **must** be sent directly to the claims professional and should not be submitted through Legal-X. These expenses should be mailed directly to Argo Pro Claims at [ArgoMLMail@argogroupus.com](mailto:ArgoMLMail@argogroupus.com). Expenses in excess of \$500 will be deducted from invoices submitted to Legal-X.
- Services used to file documents with the court are non-reimbursable.

## **Travel Expenses**

The following travel expenses will be reimbursed if incurred by an attorney in connection with the litigation process:

- **Coach airfare, standard car rental, reasonable hotel rates, and mileage** (not exceeding the current IRS rate), for an attorney's long distance travel. Copies of all itemized travel receipts are required.
- **Parking and tolls** incurred in connection with local travel.
- **Meal expenses** incurred in connection with overnight travel up to a maximum of **\$65.00 per day**. Meal charges are required to be included in the invoice as itemized expenses along with copies of the supporting receipts.

The following travel expenses will **not** be reimbursed:

- **Entertainment, dry cleaning**, or other non-essential travel expenses.
- **Mileage costs for local travel** (less than 50 miles roundtrip).
- **Parking validations** for court reporters, stenographers, and other counsel. This is considered part of the firm overhead.

## **Billing Requirements**

Billing must be in **.1 hour** increments with an expected minimum of **.1 hour**. We will not accept charges in increments of **.25 hour**. Minimum charges of **.25 hour** will be reduced to **.1 hour**.

"Bundling" of several tasks in one billing entry is not permitted, except for simple tasks billed up to **.2 hours**. Block billing is strictly prohibited. Invoices that contain block-billing may be rejected. Preparation time must be billed in a separate entry from attendance time.

"Minimum unit billing" will not be accepted. (Examples: Telephone calls always billed at a minimum of .3 hours; Answer to complaint or other responsive pleading, billed at 2.5 hours). Billing must be for the actual time spent by the attorney or paralegal for the specific activity, even if it is a word processing effort with only a small amount of actual attorney time.

Firms will not be reimbursed for the time of more than one partner on a file. If more than **one partner** is billed, all other partners will be reduced to the firm's approved associate rate. Any deviation from this rule will need **approval from senior claims management with a title of AVP or higher**.

It is required that the attorney approved by us will take the depositions of plaintiff, other significant witnesses and defend the insured deposition. Additionally, the retained attorney is required to argue

motions and attend court hearings. In the event that the assigned attorney cannot be present for a case function, i.e. hearing, deposition, etc., the need for another attorney to assume responsibility for that function must be presented to and approved in writing by the claims professional prior to the activity taking place. If another attorney in the firm covers a deposition or hearing, he/she may bill for the reasonable time to prepare for that task, but not for a comprehensive case review.

The review, revision, or reworking of another timekeeper's routine work is considered part of the firm's non-billable overhead/training. However, review of non-routine matters considered of critical importance to the case will be allowed. The review must be completed by a timekeeper that is senior in law firm status to the timekeeper that completed the original work, and the review time must not exceed **25%** of the time billed for the original preparation of the work product. Please understand that we are paying for experienced professionals who are qualified to develop a professional work product. We will not pay for time spent for editing mistakes, reworking, redrafting, or making corrections of a substandard work product.

If a claims professional or his/her supervisor or manager approves the internal transfer of a litigated matter from one attorney to another, the time associated for file review undertaken when a file is transferred to a new attorney in the firm will not be reimbursed. This also applies if a new associate or paralegal is involved in the file.

There is a 10 hour limitation for the maximum number of hours an individual attorney may bill per day (absent trial, long distance travel, mediation or arbitration).

Travel time will be reimbursed at 50% the approved hourly rate and must be billed in a separate entry from attendance or preparation time.

Time billed for more than one matter should be clearly delineated as split billed and/or firm must use split billing percentage feature in Bottomline Technologies Legal-X.

Time billed for cases wherein we have entered into cost sharing agreements with other carriers should be identified as such by utilization of the cost sharing capabilities within Bottomline Technologies Legal-X.

## **Adequate Descriptions**

Each activity for which time is billed must be described adequately so that a person unfamiliar with the case may determine what activity has been performed.

Adequate descriptions include, but are not limited to, the following:

- For intra-office and third-party communications (e.g., telephone calls, correspondence, and meetings), the identity of other participant(s) and what was discussed
- The purpose of the court hearing/conference and who attended
- The identity of each deponent/interviewee
- The purpose of review of deposition or trial transcripts
- The specific issue researched
- The specific non-deposition discovery and the nature of the work performed
- The specific motion prepared and the nature of the work performed
- The identity of the material or documents reviewed, and the purpose of the review

## **Adequate Description Examples**

### **1. Telephone Conferences**

*Acceptable*

"Conference with plaintiff's counsel concerning settlement."

*Unacceptable*

"Conference"  
"Telephone calls to counsel"  
"Call re status"

**2. Correspondence**

*Acceptable*

"Letter to plaintiff's counsel regarding outstanding discovery."  
"Review correspondence from claims representative providing Defendant's statement."

*Unacceptable*

"Draft letter to defendant."  
"Review correspondence."

**3. Preparation of Pleadings**

*Acceptable*

"Prepare memorandum of law in support of motion for summary judgment on statute of limitations as to negligence claim."

*Unacceptable*

"File motion."  
"Work on ..."

**4. Legal Research**

*Acceptable*

"Research regarding the appropriate trigger theory as discussed with and approved by Claims Professional Andrew Jones."

*Unacceptable*

"Legal Research."

**5. Discovery**

*Acceptable*

"Receipt and review discovery requests from plaintiff's counsel."  
"Review plaintiff's medical records in preparation of deposition."

*Unacceptable*

"Reviewing discovery."  
"Review medical records."  
"Attend depositions."  
"Prepare for deposition."

**6. Court Appearances**

*Acceptable*

"Conference with judge regarding scheduling order."  
"Attend summary judgment hearing."  
"Conference with judge"

*Unacceptable*

"CONFERENCE WITH COURT"

We require an attorney to bill on a pro-rata basis where a particular activity will benefit more than one case, matter or client. For example, where an attorney appears in court to argue several motions, the billing to each file should show the apportioned costs and fees related to each particular case.

When standardized (template) pleadings or forms are used, Argo will pay only for the actual time needed to prepare the pleadings, not for the time to draft the standardized (template) document.

We will allow for attorneys to bill for time spent dealing with **incoming** telephone calls and **incoming** communications regarding scheduling of various activities. The description for this type of activity must clearly identify that the communication was **incoming** directly to the attorney. Routine scheduling of case activities should be completed by non-attorney staff and should be included as a part of law firm's overhead.

## **Legal Services Bill Preparation**

All legal invoices are required to be submitted electronically through the Bottomline Technologies System – Legal-X (<https://bottomline.legal-x.com>) for review. NO PAPER INVOICES WILL BE PROCESSED. Invoices received in the mail will be returned unprocessed. Upon disposition of a case, law firms are required to complete the associated fields contained in the “Closed Case Information” section of the Argo Group Case Form in the Bottomline Legal X system.

For those types of legal fees and expenses that require the advance approval of a claims professional, the name of the claim professional giving approval **must** be identified on the invoice. This includes, but is not limited to: motions, research in excess of 10 **hours**, expenses over **\$500**, experts and multiple attendance.

The following invoice form/content is applicable for any legal invoice submitted for payment:

Each activity must be individually itemized on an invoice. This means that the following information must be provided: date completed, identity of the individual performing the activity and the time spent on the activity with corresponding UTBMS code. Grouping of activities with one time entry will not be accepted, unless it is for simple activities requiring **.2 hour** or less.

- The legal work-product should be specifically and concisely described.
- Travel and other expenses, must be supported by sufficient documentation to permit verification.
- At the conclusion of each invoice, include the names, hourly rates, and total time applicable to each professional involved in performing the legal services billed.
- Charges billed more than 180 days from the date of service will not be honored.

Argo may withhold payment of invoices that, in whole or in part, do not comply with these Guidelines.

## Attachment 1

# Reporting

For each case, we ask that you provide us with three types of reports: An Initial Case Analysis (“ICA”), Interim Report and a Trial Report.

## Initial Case Analysis “ICA”

Your ICA is due *45 days* subsequent to receipt of a lawsuit assignment from a claims professional.

It is a requirement for you, within this first 45 day period, to meet with the insured defendant(s) and any other relevant individuals, so that you will have enough relevant information/documentation to provide meaningful information in your factual overview of the case, i.e., more than a just a summary of the complaint. In addition, after you have completed an investigation of the facts and an evaluation of the potential damages and the applicable law, you are required to contact the claims professional in order to discuss your recommendations as to a future course of action. During this conversation, the claim professional and you will develop a litigation strategy. Upon completion of the development of the litigation strategy, you are required to provide the claim professional with an estimate of the costs that may be incurred for the purpose of completing the actions that the claims professional and you have agreed are necessary to support the litigation strategy.

The ICA should include the following sections:

### I. Parties Involved

This section should include an identification of the plaintiffs and defendants along with a brief description of their status and potential involvement in the litigation, e.g. “Defendant John Doe is the Director of Administrative Services for the Town and is the plaintiff’s immediate supervisor.”

### II. Overview of Complaint

This section should provide a summary of the causes of actions that have been pled by the plaintiff(s) in the complaint. Although you may consider it necessary to include a discussion of the factual allegations in this section of the report, your discussion should be limited to summarizing the specific causes of action, e.g. Negligence, Failure to Warn, Intentional Infliction of Emotional Distress, Breach of Contract, violations of 42 U.S.C. §1983, etc.

### III. Factual Overview

Please provide a *detailed* factual summary of the claims based upon the underlying causes of actions and allegations in the complaint and your understanding of the case based on discussions with the insured defendant(s) and any documentation that you have obtained/received. As parties to a complaint may differ as to the “facts,” such differences should be highlighted.

### IV. Damage Evaluation

Please provide an overview of the damages currently claimed and those that *potentially* could be claimed. This discussion should include as much detail as possible, including the availability and applicability of the various types of damages to the underlying claim, e.g. legal fees, treble damages and punitive damages.

### V. Evaluation of Venue, Law & Liability

Please provide an outline of the law that is applicable to each of the causes of actions identified in Section II of the Report and apply that law to the facts of the case in order that you can provide an evaluation of each of the causes of action in the complaint, including an evaluation of each insured defendant's liability for the damages based on each cause of action. Also include in your analysis an assessment of the legal climate found in the venue as well as specifics regarding the characteristics of the potential jury pool.

#### VI. Evaluation of Settlement Potential

It is understood that providing a settlement analysis within the first 60 days can be difficult. However, it is important from the very early stages of the litigation to make a determination as to whether a case is one that should be settled and, if so, at what cost. You are in the best position to make this evaluation, and you should provide whatever thoughts or recommendations you have on this subject.

#### VII. Future Strategy & Budget

This section should incorporate a narrative of the litigation strategy that was developed by the claims professional and you. It is required that you identify the specific actions that are required to be completed in support of the litigation strategy, e.g., depose 6 individuals including plaintiff...; file 12(b)(6) motion; file motion for summary judgment, etc. You should also provide a date by which each specific action will be completed and a cost estimate for the completion of each action.

### **Trial Reporting**

A Pre-trial Report must be completed no later than *60 days* prior to a scheduled trial date.

The format of the Pre-trial Report is similar to that of the ICA. You are required to provide a comprehensive overview and analysis of the case based on the existing information/documentation, and an identification of any outstanding information/documentation that is relevant to the case. The Trial Report should include all the facts and analysis that you have previously provided to us. In addition, we ask that you provide a variety of trial specific information. Your Trial Report should include the following sections:

#### I. Case Caption

- a. Venue
- b. Brief description of the venue and jury pool

#### II. Opposition

- a. Name of opposing counsel
- b. Description of his/her litigation outcomes and/or expertise

#### III. Court

- a. Name of judge
- b. Description of his/her reputation

#### IV. Facts

- a. Triable issues of fact and law

V. Witnesses

- a. Names of all lay witnesses and a summary of expected testimony
- b. Defense counsel's impression of how each witness will present (i.e. Very good, average, below average, etc.)
- c. Names of experts and a summary of expected testimony

VI. Motions

- a. Listing of all motions in limine filed (or anticipated to be filed) by both sides

- b. Status of any pending motions and potential impact of court decisions on ultimate case disposition

VII. Budget

- a. Projected costs of trial including expected length of trial

VIII. Anticipated Result

- a. Estimated chance of prevailing
- b. Likely verdict range

IX. Proposed Jury Charge/Verdict Form

X. Status of any settlement negotiations

- a. Including estimate of recommended settlement value, if any

XI. Proposed trial attendance by client/claims professional