
WORKERS' COMPENSATION

IMPACT REPORTING

REFERENCE USER GUIDE

FOR USE BY COUNSEL

INITIAL CASE EVALUATION

(Prepared and sent within one week of receipt of file)

To include LitPro Strategy, Litigation Plan & Expense Estimate

Impact Reporting	LitPro Compliance	Suggested Analysis
1. Allegations: (Brief statement of facts)		This should be a concise, high level summary. For example, “This case involves a slip and fall in the parking lot at the mall where Acme Department Store is located.” “This WC case involves a secretary who alleges carpal tunnel syndrome as a result of typing 5-6 hours per day.”
2. Issues:		Why is this case in your office? What is at issue? What is plaintiff/employee seeking? What are the defenses? Issues of jurisdiction, venue, Statute of Limitations.
3. Initial Strategy:	<i>Was an initial litigation strategy discussed and agreed to by Claims and Counsel?</i>	State the actual strategy in which the case should be placed. In addition, LitPro requires <u>agreement</u> . Counsel can agree with Claims in a number of ways. Examples could be: <ul style="list-style-type: none"> • Per our conversation of 1-21-06, we agreed that this case should initially be placed in the Settlement Strategy. • I agree with your recommended strategy of Discovery/Investigation strategy.
4. Litigation Plan:	<i>Was an Action Plan formulated, communicated and agreed to by Claims and Counsel, with target dates?</i>	What is the overall agreed upon plan for handling and defending this case? How does this fit into the issues? Who is going to do what to achieve the plan? Completion dates should be included in this note. Comments should also be made generally if there are potential strategies and actions that were considered but eliminated in concert with claims. For example, it should be noted that potential motions such as change of venue, to dismiss, Summary Judgment, etc., were considered but for strategic or other reasons were not acted on. The same with other case handling decisions such as retaining experts.
5. Expense Estimate: (All cases except those placed in the Settlement Strategy must have a budget.)	<i>Was an expense estimate established, communicated and updated as required?</i>	Generally speaking, Claims is seeking estimates for legal expenses through discovery and trial. The standard templates should be utilized for both liability and WC cases. The Initial Case Evaluation should include comments regarding the projected litigation costs and a reference to a more detailed budget sent under separate cover. For example, “Regarding the budget, it is estimated that the legal fees and expenses would total \$12,000. (\$4,500 through discovery and an additional \$7,500 through trial). A more detailed expense estimate is being sent to you under separate cover.”
6. Exposure: (For denials and complex cases.)*		Range of potential full exposure including potential penalties and/or other dispositions.
7. Other:		Are there any other comments that should be included in the initial case evaluation that do not fit into any of the categories above? If so, they should be included here.

*For National Markets, if exposure reaches \$75,000 to \$100,000 the Claims Team Manager must be copied on this report. If exposure exceeds \$100,000 the Claims Team Manager and Claims Manager must be copied on this report.

Nothing in this document/goal is intended to interfere with counsels’ independent judgment in the representation of their clients.

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WC Impact Reporting Reference User Guide
For Use by Counsel
INITIAL CASE EVALUATION

SAMPLE

To include LitPro Strategy, Litigation Plan & Expense Estimate

Firm – Initial Case Evaluation/LitPro Strategy/Litigation Plan/Expense Estimate

ALLEGATIONS: This note confirms our telephone conversation and agreement on February 15, 2006. This case involves a slip and fall in the parking lot of the Acme Restaurant in Springfield on December 15, 2005. The initial incident report indicated that it had snowed six inches the previous night. Plaintiff slipped at 6:15 a.m. Based on the Complaint, plaintiff alleges a herniated disc as a result of the fall. Plaintiff is also alleging loss of wages and earnings capacity, medical expenses and pain and suffering. Mrs. Plaintiff is also making a loss of consortium claim.

ISSUES: There are a number of issues with this case. The first issue is liability in the first place. Where did the plaintiff actually fall? Is the location the responsibility of Acme or the mall? Depending on the location of the fall and whether the snow was a natural accumulation, we could consider a MSJ. What does the lease agreement indicate regarding responsibility for snow clearing? Is there a snow removal firm that could be responsible to either Acme or the mall? If so, a tender should be made to the mall and/or the snow removal company. There will also be a number of issues dealing with medical causation and treatment as well as past and future loss wages. Were there any witnesses to the fall?

INITIAL STRATEGY: We agreed that this case should initially be placed in the Discovery/Investigation strategy.

LITIGATION PLAN: Claims will 1) determine the exact location where plaintiff fell; 2) obtain a copy of the lease agreement between Acme and the mall; 3) determine if either the mall or Acme had an agreement with a snow clearing company and, if so, obtain a copy of that agreement; 4) has Acme ever assumed responsibility for snow removal at the location where plaintiff fell, even it is was not required to do so?; 5) was there any conversation or communication between the insured and the mall after this fall? If so, determine what those communications were and obtain copies of any correspondence; 6) determine if there were any witnesses. Did anyone speak with the plaintiff? If so, obtain RI's, if possible. Target completion date is 3/15/06.

Firm will file an answer generally denying the allegations. We will also send out the standard set of opening interrogatories to plaintiff. We will also have a paralegal obtain the weather information from NOAA. Target completion date is 3/15/06.

We agreed that we would get back with each other on March 15, 2006. At that time, we can determine where we are on obtaining the information above. At that time, we can discuss a tender to the mall or the snow clearing company, filing a MSJ or whether we should file a third-party complaint. We will not have the discovery back from plaintiff. Depending on what you determine, we may also want to take the plaintiff's deposition immediately to set this case up for summary judgment. If we are able to determine that Acme has no responsibility early on, we can posture this case for quick resolution.

EXPENSE ESTIMATE: I will be sending to you a more detailed budget under separate cover. However, the initial expense estimate is \$10,000 (\$4,000 through discovery with an additional \$6,000 through trial)

OTHER: The other issues of medical and lost income can be discussed later and after receipt of the discovery responses from plaintiff. We should direct our attention to the possibility of being dismissed from this case if we can show that Acme is not responsible party

Joe Smith/Attorney/Firm

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DEPOSITION SUMMARY

(Prepared and sent within one week of Deposition)

Impact Reporting	LitPro Compliance	Suggested Analysis
1. Deponent Information:		Who was deposed? When was the deposition? How does this person fit into the case? The length of the summaries should be brief and high level.
2. Deponent Assessment:		How did the deponent present? How would this person come across before a jury or judge? Comments on credibility, qualifications?
3. Testimony Highlights:		What was the testimony regarding liability and damages? What was surprising or unexpected from this deponent?
4. Impact:	<i>As discovery developed, including depositions, was Claims advised as to how it impacted liability and damages?</i>	What is the impact of this deposition insofar as it relates to liability and damages? Does this testimony change the theory of defense? Does the deposition open a window of opportunity to resolve this case?
5. Recommendations:	<i>Does the file reflect that appropriate discussions were held with Claims regarding the possibility of amending strategies during the course of the case?...Were the expense estimates modified, if necessary, during the course of the case?</i>	Is it recommended that the Litigation Plan be revised as a result of this deposition? If so, what are the recommendations? Who is going to do what by when? Also consider the following: adding parties, additional defenses, filing appropriate motions, obtaining experts, attempting settlement at this time, additional discovery, etc.? Should the LitPro strategy or budget be updated?

DISCOVERY SUMMARY

(Prepared and sent within one week of receipt of Discovery)

Impact Reporting	LitPro Compliance	Suggested Analysis
1. Nature of Discovery:		What is the nature of the discovery? From whom was it received? How does this discovery fit into the case? The length of the summaries should be brief and high level.
2. Discovery Highlights:		What is important to claims regarding the responses to the discovery? What responses were there regarding liability and damages? What was surprising or unexpected from this discovery?
3. Impact:	<i>As discovery developed, including depositions, was Claims advised as to how it impacted liability and damages?</i>	What is the impact of this discovery insofar as it relates to liability and damages? Do the discovery responses change the theory of defense? Do the discovery responses open a window of opportunity to resolve this case?
4. Recommendations:	<i>Does the file reflect that appropriate discussions were held with Claims regarding the possibility of amending strategies during the course of the case?...Were the expense estimates modified, if necessary, during the course of the case?</i>	Is it recommended that the Litigation Plan be revised as a result of this deposition? If so, what are the recommendations? Who is going to do what by when? Also consider the following: adding parties, additional defenses, filing appropriate motions, obtaining experts, attempting settlement at this time, additional discovery, etc.? Should the LitPro strategy or budget be updated?

INTERIM ACTIVITY

(Prepared and sent within one week of trigger event)

Suggested Reasons/Labels could include Court Appearance, Settlement Information, Meeting with Insured

Impact Reporting	LitPro Compliance	Suggested Analysis
1. Reason for Update:	<i>Was the action plan timely and aggressively executed?</i>	Why is the file being updated? State what and why the file is being updated. What are the truly significant developments that are not in the file yet that impact liability and/or damages? What is the status of the Litigation Plan? Should there be modifications to the Litigation Plan? If so, agree with Claims and ensure that the file is posted. Include future follow-up dates.
2. Impact:	<i>Was the strategy / plan re-evaluated and agreed to by Claims and Counsel as new information was developed?</i> <i>Was the expense estimate established, communicated, and updated as required?</i>	What is the impact regarding the reason for this update? Why is it important? How do the developments noted above impact liability and/or damages? Based on the information that is being updated, should there be a discussion with Claims regarding the LitPro strategy? Should it be changed? If so, communicate with Claims and post the agreement. Does this new update require the Litigation Plan to be reevaluated? Should the Plan be modified in any way due to this information? If so, communicate with Claims and post the agreement. Has the budget been reviewed lately? Does it need to be updated at this time? Does it need to be modified? Does it accurately reflect what the file has cost to date and what it is expected to cost to conclusion?
3. Exposure: (For denials and complex cases.)		Update if impact changes exposure.

The labels for interim activities will vary depending on the type of information to be communicated. Above are suggested labels and sub-titles.

PRETRIAL REPORT
(WORKERS' COMPENSATION)

(Prepared and sent within one month of trial)

The trial plan should be a succinct summary of the whole case so that when it is read by Claims and insureds, there can be no doubt that Counsel has a total grasp of the facts, issues and witnesses. The plan should also convey that Counsel, in concert with his/her client, has a blueprint as to how this case will be presented, if actually tried.

Impact Reporting	LitPro Compliance	Suggested Analysis
1. Trial Strategy:	<i>Was the strategy/plan re-evaluated and agreed to by Claims and Counsel as new information was developed?</i>	Has there been an agreement with Claims to put this case into the Trial Strategy? Generally speaking, if you have a specific trial date or time, there is no reason why the case should not be placed in the Trial Strategy.
2. Trial Issues:	<i>If Trial strategy, timely and appropriate final trial plan?</i>	What are the issues? Why is this case being tried?
3. Compensability:		Is compensability an issue? If so, what are the specific areas of compensability that are being defended? How do these fit into the issues at hand?
4. Benefits Claimed:		What benefits is the employee claiming? This should be put into terms of weeks/percentages of TTD, TPD, PPD and PTD. If medical is at issue, be specific as possible regarding the amounts for unpaid and/or future medical.
5. Evidence:		What anticipated evidence and witnesses will the employee employ? What evidence and witnesses do we have to defend the issues in this case?
6. Assessment:		What is the likely outcome? Are there downsides to trying this case? Are there other comments that should be included in the Trial Plan that did not fit into the categories above?
7. Expense Estimate:	<i>Was an expense estimate established, communicated and updated as required?</i>	The Trial Plan should include an updated Expense Estimate. If the previous estimate is still applicable, there should be an affirmative statement to claims acknowledging that the budget of xxx date is still a viable expense estimate.

It is difficult to suggest specific analysis for Workers' Compensation cases. The procedures vary differently by state. Some states require that all issues be tried at one time. Others states permit individual issues to be litigated. The lead time for hearing and trials vary among the states. The scope of discovery is very different from state to state. Counsel needs to use his/her best judgment as to what should be included in a WC Trial Plan. For any trial plan state the reason why the case is being tried, the key issues, and justifications for opting for trial.