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**PROPERTY, AUTO & LIABILITY**

**IMPACT REPORTING**

**REFERENCE USER GUIDE**

**FOR USE BY COUNSEL**

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

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## 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. <b>Allegations:</b> (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. <b>Issues:</b>		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. <b>Initial Strategy:</b>	<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"> <li>• Per our conversation of 1-21-06, we agreed that this case should initially be placed in the Settlement Strategy.</li> <li>• I agree with your recommended strategy of Discovery/Investigation strategy.</li> <li>• I recommend this case be placed in the Discovery/Investigation strategy. Unless I hear otherwise from you within one week, we will consider this to be our agreement on the LitPro strategy.</li> </ul>
4. <b>Litigation Plan:</b>	<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. <b>Expense Estimate:</b> (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. <b>Other</b>		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.

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## 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. <b>Deponent Information:</b>		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. <b>Deponent Assessment:</b>		How did the deponent present? How would this person come across before a jury or judge? Comments on credibility, qualifications?
3. <b>Testimony Highlights:</b>		What was the testimony regarding liability and damages? What was surprising or unexpected from this deponent?
4. <b>Impact:</b>	<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. <b>Recommendations:</b>	<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. <b>Nature of Discovery:</b>		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. <b>Discovery Highlights:</b>		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. <b>Impact:</b>	<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. <b>Recommendations:</b>	<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. <b>Reason for Update:</b>	<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. <b>Impact:</b>	<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>	<p>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?</p> <p>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.</p> <p>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.</p> <p>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?</p>

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

**PAL Defense Counsel Pre-Trial Report**  
**(Prepared and sent 60 days before trial)**

**Claim #** Click here to enter text. **Adjuster** Click here to enter text.  
**Date** Click here to enter a date. **Prepared by** Click here to enter text.  
**Trial Date** Click here to enter a date. **Court** Click here to enter text.

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

Impact Reporting	Analysis
Trial Strategy:	Has there been an agreement with Claims to put this case into Trial Strategy? Click here to enter text.
Trial Plan Overview:	Facts of the case and how they will be presented at trial, including expected witnesses and testimony Click here to enter text.
Liability:	Plaintiff's theory of liability, including allegations against co-defendants Click here to enter text. Theory of defense and facts in support thereof, including applicable immunities Click here to enter text. Estimated % chance of verdict in favor of insured Click here to enter text. Estimated comparative negligence of parties Click here to enter text.
Damages:	Personal injury: Describe injury, permanency claimed, pre-existing conditions and causal relationship of injury to accident. Include age, sex, marital status, occupation at time of loss, current occupation or disability status and IME results, if applicable. Click here to enter text. Alleged Medical Specials Click here to enter text. Verified Yes <input type="checkbox"/> No <input type="checkbox"/> Alleged Future Medical Click here to enter text. Alleged Lost Wages Click here to enter text. Verified Yes <input type="checkbox"/> No <input type="checkbox"/> Alleged Future Income Loss Click here to enter text. Can future damages be reduced to present value? Yes <input type="checkbox"/> No <input type="checkbox"/> Total special damages likely to be considered by jury Click here to enter text. Range of general damages without discounting for liability LOW VALUE Click here to enter text. LIKELY VALUE Click here to enter text. HIGH VALUE Click here to enter text. Property damage and other non-personal injuries: Click here to enter text. *Have punitive damages been pled? Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, explain the threshold requirements, amount recoverable. Click here to enter text. Other damages Click here to enter text. Pre-judgment and post-judgment interest potential? If so, how calculated? Click here to enter text. Lien holders

PAL Impact Reporting Reference User Guide  
For Use by Counsel

	Click here to enter text.
Assessment:	<p>Venue: <a href="#">Click here to enter text.</a> Jurisdiction: <a href="#">Click here to enter text.</a>  Key strengths and weaknesses of the case. Include an assessment of the judge, opposing counsel, parties, key witnesses (include brief statement of favorable and unfavorable testimony including experts) and the venue (advantage or disadvantage to all parties/jury pool)  <a href="#">Click here to enter text.</a>  Settlement status (last demand, last offers)  <a href="#">Click here to enter text.</a>  Pre-trial motions, motions in limine and chances of success  <a href="#">Click here to enter text.</a>  Pre-judgment interest? Yes <input type="checkbox"/> No <input type="checkbox"/> Calculation? <a href="#">Click here to enter text.</a>  Post-judgment interest? Yes <input type="checkbox"/> No <input type="checkbox"/> Calculation? <a href="#">Click here to enter text.</a>  Verdict potential (insured and all parties).  What is the maximum expected verdict, with interest? <a href="#">Click here to enter text.</a>  What is the probable verdict, with interest? <a href="#">Click here to enter text.</a>  Should a hi-lo be considered? <a href="#">Click here to enter text.</a>  Statutory caps (if any) <a href="#">Click here to enter text.</a>  Settlement potential and recommended strategy (if applicable)  <a href="#">Click here to enter text.</a>  If multiple defendants are involved, can we and/or should we attempt to settle out? <a href="#">Click here to enter text.</a>  What are your proposed jury instructions? Is plaintiff likely to agree? What will the jury see on the verdict form?  <a href="#">Click here to enter text.</a></p>
Other:	<p>Has the Insured/Defendant and/or Excess/Umbrella carrier been advised of all demands and offers? Their reactions? Duty owed to Excess/Umbrella carrier?  <a href="#">Click here to enter text.</a>  Should an appeal be necessary, what are the rules of the court? Number of days to file Post-Trial Motions, number of days to appeal, potential costs of appeal, cost of appeal bond (or will available policy coverage be acceptable?)  <a href="#">Click here to enter text.</a>  Other issues, concerns and comments  <a href="#">Click here to enter text.</a></p>
Expense Estimate:	<p>Updated expense estimate through trial. If the previous estimate is still applicable, there should be an affirmative statement to claims acknowledging that the previous budget is still viable.  <a href="#">Click here to enter text.</a></p>