

LIBERTY MUTUAL'S SUBROGATION CASE HANDLING PROTOCOLS FOR LAW FIRMS

These subrogation case handling protocols for law firms, effective August 1, 2018, are designed to provide a framework for effective and efficient communications between counsel and Liberty Mutual Insurance's Loss Recovery Unit (LRU) and subrogation specialists in the area of subrogation litigation. The goal of these protocols is to foster meaningful communications and best practices which will assist in obtaining maximum subrogation recoveries at the most reasonable costs. The protocols are intended to apply to all law firms who are handling subrogation cases on behalf of Liberty and its affiliates as directed by subrogation specialists.

I. INITIAL REFERRAL

- Absent exceptional circumstances, counsel shall acknowledge new subrogation referrals no later than two (2) days after receipt. The acknowledgement of the claim should contain the designated attorney's contact information. The firm should advise of any conflicts in this initial acknowledgement of the matter and should update any conflict issues that develop as the matter progresses. If, as a result of the conflicts check, there is a conflict or an appearance of a conflict, the firm shall either: (a) Seek a full and informed waiver of the conflict, in writing from all interested parties as required by the rules of professional conduct; or (b) Decline the defense assignment in writing to the subrogation specialist for the case and the insured/customer, returning to Liberty and the insured/customer any documentation or materials provided to it and maintaining as confidential and privileged any information provided to it by Liberty and the insured/customer.
- Counsel shall conduct a case evaluation within one (1) week of receipt and issue a decision to accept or deny the referral (unless additional investigation is needed before a decision can be made, including further conflict checks). If a matter is determined to not be a viable subrogation opportunity, the reasons for refusal to advance the recovery effort must be clearly articulated to the referring subrogation specialist and posted in the appropriate electronic file.
- When a matter is accepted, counsel must address with the LRU/subrogation specialist the following issues:
 - What information has been obtained to date
 - Whether a site visit by the attorney is warranted
 - What is the initial investigation strategy
 - Whether experts are needed and a full discussion of costs
 - All experts must be approved by the LRU/the subrogation specialist prior to retention
 - What action items need to be completed, by whom and by when, to begin and/or advance the investigation
 - What statute of limitations or statute of repose exist and how do they impact the matter and when must suit be filed

- Prior to the retention of any non-panel local counsel, LRU/the subrogation specialist must be notified and approve the retention of such counsel; all retained counsel will be required to follow these protocols

II. CASE EVALUATION

- Counsel must provide a full case evaluation with thirty (30) days after the file is referred and accepted. The case evaluation should address the initial items above as well as the following:
 - Summary of facts known
 - Investigation completed to date and plan for further investigation
 - Identification of subrogation targets and deadlines for completion
 - Analysis of potential theories of liability
 - Evaluation of subrogation recovery potential as well as target defendants and theories of recovery as to each party including evaluation of the chances of success and roadblocks towards recovery, if any
 - Recommended strategy and case activities for achieving case objectives, including but not limited to scope of discovery, motion practice, experts, etc.
 - Likelihood of success of dispositive motions if warranted
 - Estimated budget for outside counsel fees (on hourly handled cases) and costs (on contingency or hourly handled cases); a budget should be provided for the agreed tasks as well as deadlines for completion; if the matter is referred on a contingency basis a budget for expense and experts should be provided in a timely manner
 - As a guide for a budget template, Counsel should reference the ““Property, Auto & General Liability Budget Estimate Form” (available as linked in CounselLink – see reference below) which provides for estimating litigation costs for tasks prior to trial (see tab for “Settle or Discovery”) and tasks for trial and appeal work (see tab for “Trial or Appeal”)

III. ONGOING OBLIGATIONS

- Billing on Hourly and Contingency Matters
 - Outside counsel will be referred matters by the LRU/the subrogation specialist in Liberty’s litigation management system such that they will also appear in the LexisNexis CounselLink system for outside counsel e-billing (Liberty uses this system for e-billing submission, but firms are not responsible for paying LexisNexis fees).
 - Invoices (whether on hourly billed matters which shall include fees *and* expenses, or for contingency fee cases which invoices will *only* include expenses) shall be electronically submitted by outside counsel in CounselLink quarterly (every 90 days) commencing with the assignment of the matter, or sooner if the billing exceeds \$5,000 during that 90 day cycle, and not held to accumulate higher dollars levels (if an invoice was submitted sooner, subsequent invoicing should resume the quarterly billing cycle thereafter). Fees and expenses on hourly cases, and expenses on contingency cases, shall be reviewed for

Guidelines compliance (the Guidelines are posted in CounselLink – please read thoroughly)

- Final Bills on hourly matters billed by outside counsel must be clearly marked as FINAL and should be submitted as soon as all work is completed, i.e., on or shortly after the last day of service appearing on the invoice. Electronically submitted Final Bills should be marked as such, using the “Final Invoice” indicator in CounselLink. Final Bills submitted by outside counsel in paper form (not preferred) must have the word “FINAL” clearly marked near the heading information.
- Final Bills for expenses on contingency fee matters handled by outside counsel shall follow the process below under “Billing/Fee Reconciliation on Contingency Matters.”
- Case Handling, Reporting, Budgeting
 - Counsel will ensure the matter is proactively advanced by updating the LRU/the subrogation specialist no later than six (6) months from receipt of the matter to discuss status, the viability of recovery, and whether the matter should be advanced (suit filed) or closed. The reason for the agreed to decision should be memorialized by counsel (posted by Field Legal) as should any reason why more time is needed to arrive at the decision.
 - Counsel should revisit the case evaluation and expense estimate [see budget handling above] as the case progresses or as circumstances dictate, and update same as the matter progresses in correspondence with the tasks agreed to be performed.
 - Counsel shall provide additional updates whenever new substantive information is available, or every ninety (90) days, whichever comes first.
 - Counsel should provide status reports regarding any event changing occurrence or significant activity within five (5) days of the event/activity.

IV. LITIGATION/TRIAL PLAN

- When it has been determined, after discussions with the LRU/the subrogation specialist, that a matter must be arbitrated or fully litigated, a trial plan must be issued (ninety (90) days in advance of trial) along with the recommend action to file suit or initiate arbitration (both the case evaluation and expense estimate [see above] should be updated at this time). In addition, the trial plan should include:
 - Likelihood of a favorable verdict
 - Amount of anticipated probable recovery
 - Litigation plan (witnesses to be called, evidence to be presented)
 - Analysis of venue, judge and opposing counsel strengths and weaknesses

V. PRE-TRIAL/MEDIATION/ARBITRATION

- As soon as possible after receiving notice of trial, arbitration and/or mediation date, notice of same should be sent to the LRU/subrogation specialist to be followed by a report on the event, preferably sixty (60 days before said event, never less than thirty (30) days before the event, understanding that short notice is sometimes received by the attorney and providing same to the LRU/subrogation specialist cannot be avoided). The report shall include the following:
 - Full analysis – case strengths and weaknesses
 - Anticipated evidence and witnesses - strengths and weaknesses
 - Proposed strategy
 - Chances of success – defined by a percentage
 - A budget going forward addressing fees (on hourly handled cases) and expenses (on contingency or hourly billed cases)

VI. POST-TRIAL

- After trial, but before the deadline for appeal, counsel shall prepare a report for Claims addressing the following issues:
 - Summary of testimony that will impact issues on appeal
 - Evidentiary issues on appeal
 - Court's ruling on any significant motions being appealed
 - Court or jury verdict
 - Appealable issues if not indicated above
 - Likelihood of success on appeal
- Counsel shall confer with Claims concerning whether to appeal any verdict and/or court ruling, as well as a budget for the anticipated costs associated with an appeal [see budget handling above].

VII. SETTLEMENT

- Once settlement has been reached between the parties, counsel will be responsible for working with opposing counsel and the LRU/subrogation specialist to draft a release. Counsel will refer any questions regarding the terms of the release to the LRU/subrogation specialist for review and final approval. Originals and copies of the fully executed release shall be disseminated to all interested parties and retained as appropriate per the LMI/HMS/LIU Guidelines.
- If counsel receives the settlement funds (as opposed to the LRU/subrogation specialist directly receiving such), then within 14 days, counsel shall forward to the LRU/subrogation specialist the gross proceeds less any amounts that are subject to a joint prosecution agreement owed to other co-plaintiffs (also see next section).

VIII. BILLING/FEE RECONCILIATION ON CONTINGENCY MATTERS

- For contingency matters, at the time the draft of the release is forwarded to the LRU/subrogation specialist, outside counsel will ensure that all expenditures *incurred by the firm* for agents, experts, vendors, and any/all other individuals or entities who provided services as part of the subrogation efforts have been submitted for reimbursement in CounselLink pursuant to the Guidelines.
 - Outside counsel is also solely responsible for collecting and submitting in CounselLink for payment any and all *outstanding* final invoices of agents, experts, vendors, and any/all other individuals or entities who provided services as part of the subrogation efforts. Any failure by counsel to submit these invoices prior to the contingency fee calculation will place responsibility of payment of such invoices with outside counsel.
- After all final invoices related to expenses and the gross proceeds have been submitted, the LRU/subrogation specialist will provide counsel with the calculation of their contingency as determined in the Sliding Scale Contingency Fee Schedule, unless superseded or modified by a joint prosecution agreement or other multi-plaintiff arrangement. As for any claim where recoveries are in excess of the \$5M threshold outlined in the Sliding Scale Contingency Fee Schedule, the calculation of the fees will be aligned with terms that will be negotiated and agreed to between Liberty's Legal Strategic Services (LSS) Managers and counsel in collaboration with the LRU/subrogation specialist. If counsel disputes any element of the calculated contingency fee, they must submit in writing their dispute no later than seven (7) business days from receipt of the LRU/subrogation specialist's calculation. If the LRU/subrogation specialist and counsel are unable to reconcile the calculation, all disputes will be reviewed by LSS Management in an effort to ensure an equitable and fair allocation of the recovered sums. If a reconciliation still cannot be achieved, then the fee dispute will be resolved by binding Arbitration pursuant to the Arbitration section in the LMI/HMS/LIU Guidelines.

Nothing in this document is intended to interfere with counsel's obligation to adequately and professionally represent their clients and meet their obligations under any code of professional responsibility. These Protocols are the property of Liberty Mutual Insurance and its affiliates and are privileged and confidential. No disclosure, dissemination, reproduction or copying of these Protocols, or any information within these Protocols, to external third parties, is permitted without the expressed consent of Liberty.