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**COVERAGE & FIRST PARTY PROPERTY COVERAGE  
LITIGATION INTAKE, STRATEGY, and REPORTING PROTOCOLS  
October 1, 2018**

These Coverage and First Party Property Coverage Litigation Intake, Strategy, and Reporting Protocols (hereinafter “Coverage Protocols”) are incorporated into the Liberty Mutual Insurance Company, Helmsman & Ironshore (including LIU-NY) Guidelines for Law Firms, effective June 1, 2017. Failure of outside coverage counsel to comply with these Coverage Protocols may result in reassignment of cases and removal from the Coverage Panel and/or First Party Property Coverage Panel.

**General Overview**

These Coverage Protocols apply to all impending or pending Coverage litigation and First Party Property Coverage Litigation, as set forth below, involving a Liberty Mutual Insurance entity/underwriting company (“LM”).

For purposes of these Coverage Protocols, the Coverage DJ Unit (“DJ Unit”) includes all liability, first party property, and environmental/toxic tort coverage litigation, and the term “DJ Unit Attorney” includes LM attorneys handling liability, first party property, and environmental/toxic tort coverage matters.

**What Is Governed by these Coverage Protocols?**

**Coverage Litigation:** These Coverage Protocols apply to the handling of Coverage Litigation, which includes all suits where:

- (1) LM files a Declaratory Judgment (“DJ”) action or lawsuit against a policyholder, another insurer, or a third party, asking the Court to determine whether coverage under a LM policy applies; or
- (2) A policyholder, another insurer, or third party files a complaint, cross-claim, third party complaint, or any other pleading against LM, asking the Court to determine whether coverage under a LM policy applies.

**First Party Property Coverage Litigation:** These Coverage Protocols apply to the handling of 1<sup>st</sup> party property matters, involving coverage disputes as set forth in Coverage Litigation above (e.g., DJs), as well as 1<sup>st</sup> party property matters involving disputes against, or concerning, LM, pertaining to valuation, reformation, rescission, agency issues, EUOs, and appraisals, which implicate coverage issues.

**What Is Not Governed by these Coverage Protocols?**

**First Party Auto:** These Coverage Protocols do not apply to auto first party matters, such as PIP, No-Fault, UM/UIM, **unless** coverage under the policy is an issue. *Note: Issue of validity of a UM/UIM rejection form could have statewide implications and is considered Coverage Litigation.*

## Intake, Strategy & Reporting

### 1. Referral to DJ Unit of Coverage or First Party Property Coverage DJs and New Lawsuits

All Coverage Litigation and First Party Property Coverage Litigation, *involving coverage disputes as set forth in Coverage Litigation above (e.g., DJs)*, must be processed through the Service of Process team (“SOP”). In some cases, LM’s first notice of a complaint is from LM’s registered agent, Corporate Services Company (“CSC”), and in other cases, the first notice to LM is from some other source. In addition to suits against LM, complaints filed by LM must be processed by the SOP team.

- **Service On CSC:** The SOP team automatically receives all complaints that are served on LM through CSC. When Coverage Litigation or First Party Property Coverage Litigation, as defined above, is identified, the SOP team sends a CSC notice to the appropriate individuals in the claims and legal departments. When the claims adjuster receives a CSC Notice from the SOP team, the adjuster should immediately contact the DJ Unit Attorney assigned to the state of the litigation to discuss selection of counsel. Do not resend CSC Notice to SOP team.
- **Service Not Through CSC:** All matters that have not been served through CSC or processed by the SOP team should be forwarded immediately to the SOP team at [LegalService\\_of\\_Proc@LibertyMutual.com](mailto:LegalService_of_Proc@LibertyMutual.com). These matters include new suit notifications from any source other than CSC and any Coverage Litigation or First Party Property Coverage Litigation, as defined above, filed against LM.
- **Litigation Filed or Anticipated by LM:** To refer a matter to the DJ Unit, send pleading or other material to the Service of Process team (“SOP”) at
  - [LegalService\\_of\\_Proc@LibertyMutual.com](mailto:LegalService_of_Proc@LibertyMutual.com).
- **Consult Auto and General Liability Claims Segmentation Guidelines:** On Commercial Insurance Liability claims, the claims case handler should consult the Auto and General Liability Claims Segmentation Guidelines, under the “Coverage Litigation Segmentation Triggers” section, to determine if the coverage matter should be referred to the Coverage Litigation Unit in Complex Claims.

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## 2. Selection of Coverage Counsel or First Party Property Coverage Counsel for All Matters

For all Coverage Litigation or First Party Property Coverage Litigation (as defined above, including DJs, lawsuits, 1<sup>st</sup> party property matters involving disputes concerning valuation, reformation, rescission, agency issues, EUOs, and appraisals which implicate coverage issues), whether contemplated or pending, **within 5 business days** of receiving notice of the matter, the claims handler or coverage adjuster (hereinafter “Claims”) and, if applicable, the DJ Unit Attorney, will discuss and agree on the selection of an outside coverage firm (“Counsel”) from LM’s approved Panels **prior to the matter** being referred to Counsel. Counsel will be selected from the appropriate Approved Coverage and First Party Property Coverage Panels. Claims and/or the DJ Unit Attorney will provide Counsel with all appropriate and necessary materials needed for initial review and evaluation, including all relevant certified policies and claim files, upon referral and in anticipation of the Strategic Consultation (see below).

## 3. Separate Claim File for Coverage

Except in situations where no conflict exists with the named insured, whenever LM initiates or is contemplating Coverage Litigation or is served with a complaint related to coverage, if there is not already a separate claim set up for coverage, the claims handler will create a separate coverage file with a different claims adjuster.

## 4. Strategic Consultation Required

To ensure the matter is handled in the most efficient manner, a **strategic consultation** with Counsel, Claims, and, if applicable, the DJ Unit Attorney must take place within **1 to 2 weeks of referral and PRIOR** to Counsel taking **any action**, such as preparing a coverage opinion, drafting a coverage position letter, or DJ complaint, or drafting a Case Analysis and Litigation Budget. This strategic consultation is a **critical step that must be taken PRIOR** to instituting or responding to any Coverage Litigation or other lawsuit/claim.

During the strategic consultation, Counsel shall provide an objective, candid, and frank *Case Analysis*, which includes an assessment on the strengths and weaknesses of the case, likelihood of success, alternatives to litigation, including settlement or other resolutions, and potential consequences of litigation. Counsel will discuss a clearly outlined *Litigation Plan* to best advance the case given the case analysis, including investigation, procedural, resolution, discovery, deposition, and motion strategies, as well as task allocations (actions to be taken by Counsel, DJ Unit Attorney and Claims), for advancing the case and estimated dates of completion, and an *estimate of anticipated litigation costs*. **As part of this strategic consultation, and within 30 business days thereafter**, Counsel shall memorialize his/her

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*Case Analysis, Litigation Plan* and *Budget* as discussed above (unless the DJ Unit Attorney and Claims advise otherwise).

**Note:** For purposes of preparing an initial analysis/litigation plan, and to assist in the strategic consultation discussions, Counsel should reference the template at “Property, Auto & General Liability Impact Reporting Reference Guide,” available as linked in CounselLink. In preparing a budget, Counsel should reference the template ““Property, Auto & General Liability Budget Estimate Form” (also available as linked in CounselLink), which estimates litigation costs for pre-trial tasks (see tab for “Settle or Discovery”) and tasks for trial and appeal work (see tab for “Trial or Appeal”).

## **5. Pleadings, Dispositive Motions, and Mediation Submissions – Advance DJ Unit Attorney and Claims Approval Required**

Counsel shall provide the DJ Unit Attorney and Claims with drafts of all pleadings and dispositive motions, including complaints, answers, motions to dismiss, motions for summary judgment, and mediation submissions for review and approval, **prior** to taking any action, such as service, filing, or communicating to adverse parties. These drafts must be provided no later than seven (7) days in advance of any due date. Pleadings, including mediation submissions, and dispositive motions should not be filed without approval of the DJ Unit Attorney and Claims.

## **6. Written Discovery Responses Must Be Coordinated with HO Legal DJ Unit and Claims**

Upon receipt of discovery in the litigation (Interrogatories, Requests for Production of Documents, or Requests for Admission), Counsel and/or Claims must immediately send such discovery to the assigned DJ Unit paralegal to assist with the document search and identify appropriate persons to respond to the discovery. Counsel must provide draft discovery responses to Claims, DJ Unit Attorney, and the DJ Unit paralegal at least seven (7) days before they are due for review and approval.

## **7. Confidentiality Agreement/Protective Order Required**

Certain documents, including but not limited to claims guidelines, underwriting manuals, and training materials, can only be produced subject to a confidentiality agreement or protective order, which the DJ Unit Attorney and Claims must approve.

## **8. Depositions of Liberty Mutual Employees**

Deposition notices seeking testimony or documents from LM personnel served in Coverage Litigation or First Party Property Coverage Litigation must be immediately referred to the assigned DJ Unit Attorney and DJ Unit paralegal. All LM employees are required to confer with a DJ Unit Attorney

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prior to providing testimony and/or documents. Counsel should not identify and/or produce a LM employee as a deponent, unless this conference has taken place.

## **9. Handling, Reporting and Budgeting – Other Discovery/Depositions/Settlement/Trial**

Counsel shall keep Claims and the DJ Unit Attorney informed of all significant developments in the litigation, including how such developments do/do not impact his/her *Case Analysis*, *Litigation Plan*, and *Budget* as discussed above.

As best practices, deposition summaries should be provided within one week of the deposition, discovery summaries should be provided within one week of receipt of the discovery from other parties, and other status updates/interim activity reporting (e.g., regarding assessment of coverage issues, other case activity impacting strategies, pleadings, and motion practice, settlement and mediation opportunities and assessment, and recommendations on going-forward handling) should be provided within one week of the triggering event. If no activity is occurring in the matter, Counsel should communicate with Claims and the DJ Unit Attorney briefly at least quarterly to advise of status and direction.

Claims and the DJ Unit Attorney must be involved in all strategy discussions relating to the direction of the case, including dispositive motions, resolution strategies, trial, and whether appellate review is appropriate. Concerning trial, Counsel must provide Claims and the DJ Unit Attorney with a pre-trial report 60-days prior to the trial date. Counsel will be responsible for communicating on any developments after the 60 days, including updating the pre-trial report with new items (highlighted) to allow for further informed strategic discussions. Counsel, Claims, and the DJ Unit Attorney will also agree upon the appropriate level of reporting needed during the trial (e.g., daily summaries/trial logs).

**Note:** For purposes of reporting on developments and handling discussed above, and to assist in the ongoing strategic discussions and handling in the matter, Counsel should reference the template at “Property, Auto & General Liability Impact Reporting Reference Guide” and the “Counsel Pre-Trial Report Form,” both available as linked in CounselLink.

## **10. Extra-Contractual Allegations**

Counsel and Claims are required to notify the DJ Unit immediately in the event of extra-contractual allegations against LM, including any allegation of bad faith or unfair claim handling practices on the part of LM. Upon notification of such allegations, the DJ Unit Attorney will confer with the HO Legal Litigation Attorney for further handling. Extra-contractual allegations may not be asserted in any coverage litigation by LM without explicit written consent of the DJ Unit Attorney.

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## **11. LM Entities**

Counsel is required to confirm the correct LM entity involved in the litigation. Counsel is not permitted to file litigation on behalf of one LM entity against another LM entity.

## **12. Approval Required For All Appeals**

All appellate briefs must be approved by the DJ Unit Attorney. Please refer to the LM Appellate Protocols.

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