

# **EMC CASE HANDLING GUIDELINES FOR ATTORNEYS PROVIDING LEGAL SERVICES**

**EFFECTIVE FEBRUARY 1, 2024**

## **A. PHILOSOPHY**

Employers Mutual Casualty Company (EMC) expects to work with the Firm and EMC's Insureds to achieve the best result for the Insured in an effective and efficient manner consistent with the Firm's ethical obligations. Nothing contained herein is intended to nor shall restrict Counsel's independent exercise of professional judgment in rendering legal services for the Insured or otherwise interfere with any ethical directive governing the conduct of Counsel.

The Guidelines sets forth the process and provides the necessary form documents to assist with achieving our goal of ensuring legal representation that is competent, efficient, and cost-effective.

We expect and demand ethical, prompt, professional, and quality legal services by individuals possessing the level of expertise necessary to properly discharge the assigned task(s). The Guidelines describes how EMC expects assigned lawsuits are to be handled by Counsel; however, we understand that individual case circumstances or jurisdictional rules and practices may require some deviation from these Guidelines. Except where prior consultation with the Claim Manager takes place and deviation is mutually agreed upon and documented by Counsel, EMC expects these Guidelines will control the management of the file. In the event of such a deviation, Counsel must secure in advance, written authorization by a Claims Manager to proceed otherwise.

Effective communication between Counsel, EMC's Insured, and the Claims Professional is essential to the rendering of quality legal services. As such, effective litigation management requires Counsel and the Claims Professional discuss and pursue the earliest opportunities to achieve the desired outcome. In addition, effective litigation management requires Counsel to regularly communicate Counsel's opinion to the Claims Professional concerning: (1) the issue(s) that need to be resolved; (2) desired outcome; (3) strategy to achieve the preferred resolution; and (4) detailed budget of costs expected to be incurred in the litigation.

Counsel is responsible for ensuring that all Firm employees are aware of, understand, and agree to abide by EMC's Guidelines. To ensure compliance with the requirements of the Guidelines, and to ensure competent and effective representation of EMC and/or its insureds, EMC's litigation management team may provide compliance training to the Firm. In addition, EMC may conduct audits of the Firm's files and invoices associated with its service to EMC and/or its insureds.

## **B. CONFLICTS OF INTEREST**

The Firm shall undertake a thorough search for actual and/or potential conflicts of interest immediately after being contacted by EMC or its Insured in a matter. If a conflict of interest arises, or if any other issue exists which may compromise the Firm's ability to effectively represent the referred client, the Firm must promptly communicate the information to the Claim Professional and their Manager, in writing.

All conflicts must be disclosed to EMC no later than twenty-four (24) hours of the referral or as soon as the conflict becomes known to the Firm. The Firm shall not undertake or continue any representation of EMC or its Insured until the conflict has been addressed with EMC and its Insured and either resolved or expressly waived, in writing, by EMC and its Insured.

### **C. INSURANCE COVERAGE/CONFIDENTIAL INFORMATION**

Throughout the term of each engagement and the applicable statute of limitations, the Firm shall maintain, at its sole cost and expense, Professional Liability Coverage with limits of at least five million dollars (\$5,000,000) covering Errors and Omissions of the Firm and its subcontractors in providing or failing to provide the services, effective at all locations where the Firm may perform any services for EMC or its Insureds. In addition, the Firm shall maintain, at its sole cost and expense, at least one million dollars (\$1,000,000) of Privacy/Network Security for (1) privacy breaches (liability arising from the loss or disclosure of confidential information no matter how it occurs), (2) system breach, (3) denial or loss of service, (4) introduction, implantation or spread of malicious software code.

Counsel must take all reasonable steps to protect confidential information of EMC and its insureds including but not limited to maintaining current and reliable data breach controls to secure private and confidential information. In the event of a data breach, the Firm is required to immediately notify EMC and will reimburse EMC for all costs related to a data breach for which they are responsible.

Any exceptions to the above must be approved, in writing, by a Claims VP.

### **D. CASE DEVELOPMENT**

The Firm shall develop an effective and strategically sound legal strategy as soon as practicable in collaboration with EMC and/or its Insureds. This strategy should include:

1. Identifying all issues and settlement opportunities with the Claims Professional. Where applicable, early resolution of lawsuits should be strongly considered along with the use of alternative dispute resolution (if appropriate).
2. Identifying all activities necessary to defend a claim and bring it to an appropriate resolution. These activities should be developed in conjunction with the Claims Professional and be mutually agreed upon.

3. Completing only the tasks that have been discussed and authorized by the Claims Professional.

The Claims Professional should have the primary responsibility of conducting and managing the claim investigation. If the Firm is to participate in claim investigation, those activities must first be approved by the Claims Professional, in writing.

EMC must be informed of all critical dates and deadlines, in writing, including but not limited to deadlines for the filing of dispositive motions, expert disclosure and exchange of reports, depositions, pretrial conferences, hearings, mediations, arbitrations, and trials, etc.

5. EMC requires all written communication to be done via email and/or an alternative digital or electronic format (when appropriate). A copy of any attachment as well as the email communication itself must be maintained in counsel's file to serve as a memorandum of the communication.

6. If the Firm is involved in settlement negotiation, settlement authority must be obtained from the Claims Professional. All requests for authority must be made in a timely manner.

7. The Firm may not duplicate mailings/transmittals/phone calls unnecessarily (i.e., "via email, phone call and mail") unless specific urgent circumstances require it, (e.g. an urgent status report accompanied by a large amount of enclosures). In such scenarios, the Firm should email the report only.

8. When possible, the Firm should avoid duplicate routine telephone reports (e.g. providing the Claims Professional with a verbal report followed by a written report containing the same information).

## **E. REPORTING REQUIREMENTS**

The Firm must keep the Claims Professional and EMC's Insured advised of all significant developments in the matter.

Unless otherwise requested, reporting and/or contact with the Claims Professional is required for the following:

- **Acknowledgement of a New Matter** The assignment should be electronically accepted or rejected within twenty-four (24) hours of assignment by the Claims Professional. Once assigned, the Firm must: (1) contact the Insured client (this can be done telephonically by attorney, paralegal, or assistant) formally advising the client of the assignment of the file, and; (2) send an initial client letter within seven (7) days to the Insured client;

- **Initial File Discussion** with the Claims Professional within fourteen (14) days of assignment of the matter;
- **Initial Case Analysis Report (ICA)** within 45 days of assignment of the matter;
- **Budget/Cost Estimate** within 45 days of assignment of the matter;
- **Suit Status Update** – within six (6) months of the ICA;
- **Significant Developments** (including but not limited to) receipt of court filings and correspondences, court actions/notices, depositions, discovery responses/medicals/wage or business loss documentation; expert opinions/reports, court-mandated conferences, settlement discussions, witness interviews/affidavits, significant dates or deadlines, results of mediation/ arbitration/trial, case resolution, or any other pertinent information/documentation/activity.
- **Pre-Mediation Report, Pre-Arbitration Report & Pre-Trial Report** – 45 days prior to scheduled date of Mediation/Arbitration/Trial;
- **Post-Trial Report** – Ten (10) days after conclusion of trial; and
- **Closing Letter**- Seven (7) days after the file is closed.

If the circumstances of an assigned claim does not warrant a substantive report by the timeframes as outlined above (for example: claim inactivity due to a stay in court proceedings or death of a claimant), the Firm should notify the Claims Professional accordingly and refrain from issuing a report without substantive updates.

### **1. Acknowledgement of a New Matter:**

Within seven (7) days of receipt of a new matter, an Acknowledgement must be sent to EMC to identify the attorney assigned to the matter. Any areas of immediate concern or information that may result in early resolution of the claim should be included in the Acknowledgement letter.

### **2. Initial File Discussion:**

The Initial File Discussion with the Claims Professional must occur within fourteen (14) days of assignment of the matter. The discussion should include discovery plans, required authorization for future tasks, conflict issues, proposed budget, and a mutually agreed upon strategy.

### **3. Initial Case Analysis:**

Within 45 days after receipt of the assignment, an Initial Case Analysis must be sent to the Claims Professional and updated every six (6) months thereafter. This report should include:

- a. Summary of the allegations in the Complaint;
- b. Factual basis for the litigation;
- c. Summary of the information obtained during the initial investigation;
- d. Preliminary evaluation of liability, damages, and exposure;
- e. Clarification of the legal issues presented;
- f. Early resolution opportunities including but not limited to settlement, alternative dispute resolutions, and dispositive motions;
- g. Assessment of the capabilities/experience of Plaintiff attorney;
- h. Recommended resolution strategy(ies);
- i. Action Plan outlining the attorney's anticipated steps to be taken in furtherance of the case. This outline should be organized by 30 days, 60 days, and 90+ days;
- j. Estimated Trial Date.

#### **4. Suit Status Reports:**

Suit Status Reports serves as the updates of the Initial Case Analysis every six (6) months. The Suit Status Reports should provide updates to the topics previously outlined under "3. Initial Case Analysis," considering receipt of discovery and/or other newly acquired information. In addition, every Suit Status Reports must have an updated "Action Plan" as outlined above.

#### **5. Significant Development Reports:**

In addition to the ICA and Suit Status Reports, the Firm must communicate all significant developments to the Claims Professional. These significant developments may include the following:

- Depositions- Please note all deposition summaries should discuss the impact of the testimony on liability and damages and include the attorney's impression of the witness (such as credibility, appearance, and demeanor). The summary should be brief and focused on how the testimony impacts the attorney's case evaluation and recommended resolution strategy(ies). The report shall not be a line-by-line summary of the deposition testimony. Transcripts of depositions should not be ordered absent written approval the Claims Professional.
- Updated evaluation of the Insured's liability and damages;

- Expert disclosures and exchange of expert/investigative reports;
- Pretrial conferences, hearings, mediations, arbitrations, etc.;
- New information that affects the analysis of liability or exposure;
- New resolution opportunities including but not limited to settlement, alternative dispute resolutions, and dispositive motions.

**6. Pre-Trial, Pre-Mediation and Pre-Arbitration Reports:**

A detailed report is to be submitted to EMC no less than 45 days prior to a mediation, arbitration or trial. These reports should contain the following information (as appropriate):

- Summary of the pertinent facts (both disputed and undisputed);
- Analysis of the key issues on liability, damages, and exposure;
- Likely outcome(s) at trial, mediation, or arbitration;
- Clarification of the legal issues presented;
- Recommended resolution strategies in the event the trial, mediation, or arbitration is unsuccessful;
- Action Plan outlining the attorney's anticipated steps to be taken in the event the matter is not successfully resolved. This outline should be organized by 30 days, 60 days, and 90+ days.

Pre-Trial and Pre-Arbitration Reports should also include:

- Likelihood of success (expressed as a percentage where possible);
- Facts – disputed and undisputed;
- Analysis of pertinent issues;
- Liability – win/loss probability, possible results of trial, arbitration or mediation;
- Plaintiff damages and description of injury(ies);
- Summary of anticipated testimony by plaintiff and defense witnesses or experts.

Pre- Trial Reports should also include:

- Trial strategy including defenses available;
- Strengths/weaknesses of plaintiff and defense case;
- Proposed Motion(s) in Limine;
- Estimated length and costs of trial;
- Status of settlement negotiations;
- Anticipated jury makeup;
- Assessment of trial judge and venue;
- Potential for “nuclear” verdict and the issues that may drive it;
- All other critical issues that may impact success at trial.

## **7. Trial Reports**

The Firm must provide daily updates to the Claims Professional. The updates should include the following:

- Key events of the trial day;
- Likelihood of defense/plaintiff verdict (expressed as a percentage where possible);
- Potential for negotiated settlement;
- Status of settlement discussions;
- When the case is expected to go to the jury;
- Grounds for potential appeal;
- Expected proceedings/testimony to take place the next trial day.

## **8. Post-Trial Reports:**

If the matter has been tried to verdict, the Firm must provide a Post-Trial Report within ten (10) days after the conclusion of the trial. This report is to include:

- Key events of the trial;
- Verdict;
- Likely outcome for any post-trial motions;
- Recommendations on whether an appeal is warranted/viable or anticipated along with basis for recommendation; and
- Anticipated budget to proceed or resist an appeal, if warranted.

**F. DOCUMENTATION TO BE PROVIDED TO EMC:**

The following items should be provided to the Claims Professional as soon as practicable:

1. Amended Complaints and Cross-Complaints;
2. Answers to Complaints and Cross-Complaints;
3. Research Memorandum;
4. Deposition Reports or Summaries;
5. Discovery Responses;
6. Deposition Transcripts (if approved by the Claims Professional);
7. Motion Papers;
8. Legal Briefs;
9. Expert Reports;
10. Medical Reports and Records;
11. Releases;
12. Settlement Agreements;
13. Orders of Dismissal for Final Judgments.

The Firm must provide copies of all pleadings and amended pleadings filed by or against the party that the Firm is defending, including all orders from the court, entry of stipulations, dismissals, final judgments, or papers regarding any appeal. The Firm shall endeavor to provide all



documents via electronic means. Any exceptions to electronic communication for documents requires written approval by the Claims Professional.

The Firm will comply with all reasonable requests for information and documents. However, any documents or information that is privileged or intended by the Insured to be confidential shall not be disclosed, absent written consent from the Insured.

#### **Special Section on Developing Medical and Wage Loss Information:**

1. If medical bills and reports are not already in the file, the attorney should obtain such material as soon as possible and forward copies to the Claim Professional.
2. The attorney must verify loss wage and loss income claims. Self-employed claimants must provide income tax returns to verify the claim.
3. In cases with high medical costs, the attorney should consider using the EMC's Medical Claim Services Department to preclude the payment of medical charges which are not reasonable and necessary.
4. In cases where there are similar pre-existing injuries or the circumstances of the case indicate that the injuries are not related to the subject injuring producing event, the attorney must discuss with Claim Professional the feasibility of arranging an Independent Medical Examination (IME). IME's should be conducted so the findings can be fully considered when making a decision on the case. In a jurisdiction where a scheduling order or a discovery rule dictates when an IME must be conducted, the attorney shall initiate discussions with Claim Professional in sufficient time as to permit a timely IME. IMEs may need to be set far earlier than fifty (50) calendar days before trial.

#### **G. RECORD RETENTION**

The Firm will retain all records pertaining to its engagements by EMC for a minimum of five (5) years from final billing.

#### **H. CONFIDENTIALITY AND MEDIA CONTACT**

1. The Firm must treat all EMC matters confidentially in all respects and refer all media inquiries to EMC, unless otherwise specifically authorized in advance by EMC.
2. The Firm agrees to decline public comment on pending litigation and litigation policies, practices, or strategies of EMC.

3. The Firm may not use EMC's name, trademark, or describe EMC's matters in any identifiable way in marketing materials, public statements, any journal article, newsletter, video, or presentation, without EMC's prior written consent.

**These Guidelines are an example of case handling guidelines that promote uniformity in reporting and billing and effective and efficient case management, consistent with the defense attorney's professional responsibilities. Nothing contained herein constitutes or shall be construed as a standard of care.**

**This agreement replaces and supersedes any prior agreement between EMC and your Firm.**

**ACKNOWLEDGEMENT FORM**

I have read, understand, and will adhere to the EMC Case Guidelines on behalf of my Firm.

**(Firm Contact Counsel's Name)**

**(Firm's Name)**

**(Signature)**

**(Date)**