

## **EMC BILLING GUIDELINES FOR ATTORNEYS PROVIDING LEGAL SERVICES**

**EFFECTIVE FEBRUARY 1, 2024**

### **A. PHILOSOPHY**

It is the goal of EMC Insurance Company (hereinafter “EMC” or the “Company”) to provide for the representation of those persons and businesses afforded coverage under policies issued by the Company. EMC has established the following Billing Guidelines (“the Guidelines”), applicable to all matters referred to approved legal counsel for the representation of EMC insureds and the Company. These guidelines are to ensure that our legal counsel partners represent our insureds consistently while being mindful of the ethical obligations and standards of the legal profession. EMC agrees to pay all reasonable fees for the defense of its insureds and, where applicable, the Company. EMC has taken care to see that all its substantive Guidelines mirror legal counsel’s ethical duties pursuant to the ABA Model Rules of Professional Conduct and established case law.

### **B. STAFFING**

1. One attorney at an approved Firm will be designated to have the primary responsibility for all cases that are assigned to the Firm. Any deviation from this assignment must be approved by the Claim Professional. Consideration must be given to the experience of the attorneys in the Firm and the complexity of the case when assigning the case. Complex cases should be assigned to an experienced attorney. The assignment of a senior attorney to a non-complex matter should be authorized by the Claims Professional.
2. Avoid duplication of effort within the Firm. The responsibilities of the Firm’s staff should be clearly defined based on the individual’s qualifications, experience, and billing rate.
3. Assignment of multiple partners or associates on a matter must be authorized by the Claims Professional. EMC expects that all matters, at most, be staffed by, one partner, one associate and one paralegal. Any deviation from this arrangement must be approved by the Claims Professional prior to the work being performed.
4. When work can be performed for other clients while also performing work on an assigned EMC matter, EMC expects only to be billed for a proportionate share of counsel’s time. Such situations commonly arise when making court appearances or waiting for depositions or meetings or in other circumstances where delays are common.
5. In the event an attorney associated with a firm, leaves that law firm for any reason, no files assigned to that legal counsel firm shall be taken by the departing attorney without approval and written consent by EMC. No decisions regarding the ongoing representation of EMC insureds in such situations will be made without considering the mutual interests of both EMC and its insureds. If the attorney leaving the firm would like to be considered as approved legal counsel,

they will have to submit their new firm information to EMC for consideration to become approved legal counsel for EMC.

### **C. BILLING PROCEDURE**

Fees and expenses should accurately reflect the cost of the work that was necessary to defend, review coverage, or to resolve the matter. Only reasonable and necessary fees and expenses will be considered for payment. Fees, costs, and disbursements that are not submitted in compliance with the EMC Guidelines will not be considered for payment.

EMC expects that legal counsel has reviewed each billing statement prior to submission and that the statement is submitted in accordance with the Guidelines. Every statement should accurately represent the work and expenses which were reasonably and necessarily incurred for the work completed on that matter.

#### **1. Frequency of Billing:**

Billing statements must be submitted by legal counsel no later than every 90 days commencing on the date the file is opened. Alternative billing arrangements must be approved in writing by a Claims AVP.

Any invoices with aged charges beyond 90 days will be subject to a 20% penalty which will be subtracted from the final balance of the invoice. Any invoice with aged charges beyond 120 days will NOT be paid.

Final invoices must be submitted within thirty (30) days once the Claim is “fully resolved” (herein defined as receipt of dismissal order, and/or fully executed settlement agreement, receipt of settlement check by Claimant/Claimant’s counsel, and/or otherwise instructed by the Claims adjuster). Any final invoices submitted after thirty (30) days will NOT be paid.

#### **2. Billing Format:**

Invoices should be submitted electronically through the EMC Legal invoicing system. Paper billings will not be accepted. No billing should be submitted to the Claim Professional outside of the EMC invoicing program. Alternative billing arrangements must be approved by the Claim Manager.

#### **3. Task Codes:**

UTBMS Codes are required, including Task, Activity and Expense Codes for each entry on the billing. All Trial work should be coded separately using L400 Codes. Do not use the following Codes:

- L190 – Other Case Assessment
- L390 – Other Billing

- A111 – Other

- E124 – Other

Non-payment may occur where activities are not coded, incorrect codes are used, or the “other” codes are used.

## **D. CHARGES FOR SERVICE**

### **1. Time Charges:**

All charges for services by attorneys and paralegals must be recorded daily based upon their actual time in one-tenth of an hour increments.

### **2. Single Entry timekeeping:**

The time for each activity should be separately stated, unless otherwise directed. Grouping multiple activities under single time charges greater than one-tenth of an hour (block billing) is not acceptable.

Pattern billing (e.g., charging a minimum or set amount of time for phone calls, preparation of letters, etc.) will be rejected for further explanation.

### **3. Sufficient Explanations**

All billing entries for professional services must include a sufficient explanation of the legal task or service performed. General and generic activity descriptors, including but not limited to “Analysis of, Attention to, Strategize, Communicate with, Regarding mediation/deposition, Regarding case issues,” will not be accepted and will not be reimbursed in the absence of further information.

Set forth below are examples of “sufficient” and “insufficient” explanations of a billed for task:

#### **Telephone Conferences**

##### Acceptable

“Telephone conference with plaintiff’s counsel concerning settlement.”

##### Unacceptable

“Conference”

“Telephone call to counsel.”

“Call re status”

#### **Correspondence**

Acceptable

“Letter to plaintiff’s counsel regarding outstanding answers to interrogatories.”

“Review correspondence from Claims Professional providing Defendant’s statement.”

Unacceptable

“Draft letter to defendant.”

“Review correspondence re: discovery.”

**Preparation of Pleadings**

Acceptable

“Prepare memorandum of law in support of motion for Summary Judgment on statute of limitations”

Unacceptable

“Prepare motion.”

“Work on ...”

**Legal Research**

Acceptable

“Legal research regarding punitive damages as discussed with Claims Professional Andrew Jones.”

Unacceptable

“Legal Research.”

**Discovery/Miscellaneous**

Acceptable

“Receipt and review interrogatories directed to client from plaintiff’s counsel.”

“Review plaintiff’s medical records from Mercy Hospital.”

“Attend deposition of plaintiff, John Jones”

Unacceptable

“Review discovery.”

“Review medical records.”

“Attend depositions.”

“Prepare for deposition.”

“Analyze...”

“Consider...”

“Strategize...”

“Analyze and/or develop strategy.”

“...re: same”

### **Court Appearances**

#### Acceptable

“Attend court scheduling conference.”

“Attend summary judgment hearing.”

#### Unacceptable

“Attend court conference”

Entries with insufficient explanations will be rejected for further detail.

### **A. DESCRIPTION OF SERVICES**

It is essential that each legal activity be identified in detail on the billing. The test is whether an attorney or a Claims Professional not familiar with the billing attorney, the case or the billing firm’s practices can determine exactly what professional service was provided and assess the appropriateness of the related time charge. Descriptions of services should inform of the nature, purpose or subject of the work performed, date and type (e-mail or letter) of correspondence reviewed, type of correspondence drafted (e-mail or letter), and the specific activity or project to which it relates. Adequate descriptions include, but are not limited to:

- For all verbal and written communication (e.g. telephone calls, correspondence, and meetings), the identity of the other party/participant and the subject matter of the communication
- The purpose of the court hearing/conference and who attended
- The identity of each deponent/interviewee
- The purpose of review of deposition or trial transcript including the total page count
- The specific legal issue researched

- The specific non-deposition discovery worked on and the nature of the work performed
- The specific trial preparation or deposition preparation performed
- The specific motion worked on and the nature of the work performed
- The identity of the material or documents reviewed, and the purpose of the review
- For travel time, the time spent traveling, the purpose and destination
- Any items listed as “miscellaneous” expense items will be rejected for further detail.

## **F. FEES AND EXPENSES**

### **1. Compensation:**

Counsel will consult with the EMC Claims Director, Litigation Spend Management Specialist, or VP regarding any increase in the rate of hourly compensation for attorneys and paralegals.

**Please note:** EMC will review all new or changed billing rates on an **annual basis**. Any increase to the agreed upon billing rates must be submitted to EMC for approval by not later than January 15<sup>th</sup> for each calendar year. Please note that rate increase requests will not be considered at any other time during the year. If there are any charges submitted with unapproved increased rates, the charge will be paid at the current approved rate.

### **2. Intra-office and Inter-office conferences:**

EMC will not pay for intra-office or inter-office conferences unless necessary for planning strategy for a significant event (ex: upcoming trial) and prior authorization is obtained from EMC. When intra-office or inter-office conferences are approved, EMC will only pay for the time of one attorney. The task entry is to identify the Claims Professional that authorized the conference.

### **3. Multiple Attendance:**

Counsel will consult with the Claims Professional PRIOR to multiple attendances taking place at trial, court appearances, meetings, depositions, witness interviews, inspections, and other functions. The task entry is to identify the Claims Professional that authorized the multiple attendance at these or any events.

### **4. Depositions:**

a. Counsel will consult with the Claims Professional before initiating depositions other than that of the plaintiff(s), the Insured and other depositions already approved in the initial Litigation Plan or supplement thereto.

b. Counsel will utilize EMC's preferred provider for court reporting services.

c. Counsel will advise EMC of upcoming depositions initiated by other parties that counsel plans to attend.

d. EMC's policy is to pay for deposition transcripts when used for preparing a dispositive motion and/or in preparation for trial. EMC requires prior consultation with the Claim Professional before ordering any transcript unless ordering a transcript is required by law or court rule. The line-item description on the billing statement must include a brief description of the reason the transcript was ordered and the name and position of the Claim Professional who gave prior approval.

#### **5. Legal Research:**

Counsel will consult with the Claims Professional before undertaking legal research requiring over three (3) hours of research, cumulative, on any one file. Copies of all research memoranda shall be provided to EMC. The task entry is to identify the Claims Professional that authorized the legal research.

EMC will not pay for legal research considered to be routine or elementary including research on issues considered to be common knowledge among reasonably experienced counsel in the counsel's local area. EMC also expects counsel to utilize previously prepared research whenever possible. Although EMC will not pay for research (or any other work) previously prepared for other matters, EMC will pay for that portion of the research that updates the work product.

#### **6. Motions/Appeals/Declaratory Judgment Actions:**

Prior consultation with EMC Claims Legal is required before filing any declaratory judgment action and for any appeals. Prior consultation is required before filing any motions with the Claims Professional. Evidence of the written consultation must be included with the submitted billing.

#### **7. Revision Standardized Form/Pleadings:**

Only the actual time spent in personalizing standardized pleadings, documents, discovery responses or discovery requests to the case at hand will be billed. EMC will not pay for the time originally spent drafting standard language.

#### **8. Secretarial and Clerical Activities:**

Clerical, secretarial, and administrative activities are not billable to EMC. Refer to "J." below for details and clarification of these activities.

#### **9. Paralegal Tasks**

EMC will not pay for secretarial tasks performed by paralegals or paralegal tasks performed by attorneys. If no paralegal billing rate is provided on the billing, EMC will incorporate a standard

paralegal rate of \$65 per hour in the event of attorneys performing work more appropriately performed by a paralegal. Common paralegal functions include, but are not limited to:

- a. Preparation of Interrogatories (Form/Preprinted);
- b. Summarize Answers to Interrogatories;
- c. Preparation of Notice to Produce;
- d. Summarize Depositions (line summary/digest);
- e. Summarize Employment Records;
- f. Summarize Medical Records;
- g. Preparation of Trial Notebooks;
- h. Shepardize Case Law;
- i. Preparation of other non-complex discovery requests, pleadings, orders, notices, stipulations;
- j. Preparation of Medical/Employment Records Requests;
- k. Preparation of Demand for Jury Trial;
- l. Researching procedural rules and regulations;
- m. Performing pre-approved factual investigations, including obtaining/procuring information regarding plaintiff's injuries, including prior accidents determining corporate name, place of business, structure, shareholders, officers and employees;
- n. Coordinating release of information by federal, state, and local governmental agencies, including IRS, Secretary of State, Department of Motor Vehicles and Worker's Compensation Commission;
- o. Title searching (including real and personal property) or reviewing land documents to ascertain title and related information;



- p. Paralegals are to perform duties which are appropriate in assisting counsel. Charges should be reflected accordingly. Paralegals should be used as much as possible for research, preparation of pleadings, etc.

## **G. DISBURSEMENTS**

### **1. Internal Expenses:**

Reimbursable costs and tasks include, but are not limited to:

**2. Photocopying** – in house (\$0.10 per copy). However, EMC will not reimburse for the time charged to make the copies.

**3. Outside photocopying**- This must be utilized as a cost-saving factor for voluminous projects (e.g., 1000 pages or more) and not as a method to handle overflow or purely for the firm's convenience. Accordingly, EMC expects that this service will be performed by a price-competitive establishment. All documentation from the outside photocopying service validating the charge must be available for review. Additionally, the line-item description on the billing statement must include a brief description of the copied documents. Any photocopying projects considered non-voluminous shall be paid per item a. above.

**4. Color Photocopying** –Color copies are strongly discouraged unless necessary. In those rare instances, an estimated cost and reason for the color copies must be provided to the EMC Professional. Written authorization must be provided by an EMC manager/supervisor before any such copies are permitted. In house (\$0.30 per copy). EMC will not reimburse for the time charged to make the copies.

**5. Printing Documents from a CD** – The Firm will be reimbursed at the photocopy rate set in 4., above, for printing documents from CD's.

**6. Telephone Bill** – Long distance. EMC will pay actual necessary long-distance telephone charges only. Local telephone charges are not reimbursable. Non- itemized long-distance charges will not be reimbursed. Telephone charges for cell phone usage is considered part of the Firm's overhead and will not be reimbursed.

**7. Computer Assisted Research & Research Programs** – The cost of Lexis, Westlaw or other electronic databases, computer assisted research programs, or Internet access charges are not reimbursable. These charges are considered part of the Firm's overhead.

**8. Overhead Items** – EMC will not pay for overhead items including, but not limited to: rent, equipment rental, utilities, computer equipment, software, books/periodicals, seminars, office supplies, postage, word processing, routine photocopying, or printing.

**9. Overtime** – EMC will not pay for overtime charges for any of the Firm's employees. These charges are considered part of the Firm's overhead.

## **H. EXTERNAL EXPENSES:**

1. Outside Vendors – Charges for service by outside vendors will be reimbursed at their actual cost. A copy of the outside vendors invoice is to be submitted to EMC. Expenses over \$250.00 may be forwarded to EMC for payment.

Disbursements should be itemized on the Firm's statement with the following information:

- Name of the vendor;
- Date service incurred; and
- Specific description of the expense.

2. Prior consultation is required before engaging any experts, investigators, temporary attorneys, local counsel, outside paralegals, witnesses, and/or consultants to perform services on a given case. The line-item description on the billing statement must include a brief description of the reason the charges were incurred and the name and position of the Claim Professional who was consulted. Evidence of the written consultation must be included with the submitted billing.

#### **I. TRAVEL EXPENSE:**

1. Legal counsel should always use the principle of reasonableness when incurring expenses on behalf of EMC. The concept of reasonableness implies being fiscally responsible and not incurring unnecessary expenses or expenses above levels needed to accomplish the associated business objective.

2. Counsel will consult with the Claims Professional for pre-approval prior to incurring travel expenses. EMC will reimburse counsel for reasonable travel expenses. Hotels must be priced moderately. All expenditures of \$25.00 or more must be supported with receipts.

3. EMC will reimburse for mileage at the rate allowed by the Internal Revenue Service at the time the travel takes place.

4. Airfare at coach rate.

5. Out of area overnight or day travel should be at the lowest available fare.

6. Meal expenses, for long distance travel, will be reimbursed at reasonable rates. The Firm will provide the restaurant receipt in support of charges, upon request.

7. All types of ground transportation will be by the most economical means available. Any approved travel which involves use of public transportation must be moderately priced.

8. When incurring an expense, the following should be considered for determining if the expense is reasonable:

a. Nature and necessity of the business activity associated with the expense

b. Prevailing prices at the time and location that the expense is to be incurred

9. Local travel time is not billable. EMC considers travel to be local when the destination is 25 miles or less each way from the firm's address. However, EMC agrees to pay 50% of the billing rate for all approved travel time (by any form of transportation) for non-local travel. The approval of travel by the Claims Professional does not constitute a waiver of the 50% travel rate reimbursement policy.

10. Professional fees for travel time must be itemized separately from the related activity. For example, the time spent traveling to a deposition must be billed separately from the time spent at the deposition. If the activity and travel time are not billed separately on the billing, the entire entry/line item will be rejected for correction. If no travel time is included in an entry/line item, a notation of such must be included in the entry/line item; otherwise, the entire entry/line item will be rejected for further detail.

11. Travel related expenses such as alcoholic beverages, rental movies, personal grooming services, private limo/driving services (as opposed to taxi, ridesharing such as Uber/Lyft, or shuttle service), valet expenses, travel upgrades for airplane tickets (e.g. early check-in fees, seat upgrades) and extras on rental cars (e.g. loss damage waiver, personal accident insurance, personal effects protection, and additional liability insurance) will not be reimbursed.

The line-item description on the billing statement must include the name and position of the Claims Professional who was consulted. Evidence of the written consultation must be included with the submitted billing.

**a. Messenger, Courier, Express, FedEx, or Overnight Delivery** – EMC will not reimburse for the use of FedEx, express, overnight delivery, or the use of couriers to deliver documents or other file materials, which could have been delivered through regular mail or other less expensive means, with advance planning. If these services are authorized by EMC and billed, an explanation must be provided. These services are to be used only when necessary.

**J. NON-REIMBURSABLE TASKS COMPLETED BY A SECRETERIAL, CLERICAL, PARALEGAL, AND DEFENSE COUNSEL ACTIVITIES:**

Examples (but not a complete list) of items not billable to EMC:

1. Receipt and distribution of mail;
2. New file set up;
3. Maintenance of office and attorney calendars;
4. Secretarial work performed by paralegals or administrative services including secretarial and clerical functions;

5. Excessive reviewing, proofing, editing of memoranda, motions, letters, e-mail, or other documents or communications, etc.;
6. Any file review done when the file is transferred to a new attorney;
7. Transcribing;
8. Time charged for copying, posting, digital scans;
9. Inserting documents into and retrieving documents from the file;
10. Maintaining order in the file, assembling materials, filing;
11. Tabbing files or sub-files;
12. Training time, continuing education for any personnel;
13. More than one (1) attendee at any deposition, meeting or hearing in all matters involving litigation, without prior authorization from EMC;
14. Reviewing or processing of third-party invoices;
15. Acknowledgment letters that do not contain any evaluation or analysis language;
16. Communicating with copy services, interpreters, court reporters, medical offices or other law offices for the purpose of scheduling;
17. Scheduling depositions, medical exams or other appointments;
18. In-house messenger service;
19. Preparing invoices/billing inquiries/accruals; or
20. Preparing auditor responses
21. Work that could have been performed by EMC personnel unless approved in advance by EMC;
22. Fees for a general, diary or status file review which is not precipitated by an event such as a telephone call or receipt of correspondence or which does not result in the creation of any tangible work product;
23. General, routine and standard file reviews performed by senior personnel without substantive legal work performed on the file;
  - Billing individual fees and charges for documents prepared for multiple parties when only one document is prepared with minimal modifications to subsequent documents. This includes correspondence that is prepared for multiple recipients with minimal modification to subsequent correspondence;

- More than two tenths (.20) of an hour for the preparation of subpoenas or medical records requests prepared for multiple parties when only one document is prepared with minimal modifications to subsequent documents;
- Preparation, modification, and review of case budgets or responding to EMC;
- Fees resulting from inappropriate staffing (e.g., partners performing research, associates drafting chronologies, etc.);
- Time expended on revision or modifications of the work product of a junior attorney by a senior attorney absent a new factual or legal development;
- Charges for preparation of law firm billing statements, responding to questions regarding billing statements and negotiating disputes over billing statements;
- Duplicative tasks, reviews or analysis related to the same document or pleading;
- Requests for authority/approval (including, but not limited to travel, attendance at depositions, mediations, etc. and authority to perform legal research or the hiring of experts);
- Preparation of deposition summaries by a person other than the attorney that attended the deposition;
- Conflict checks
- Docket checks for service or to determine whether a pleading has been filed;
- E-filing or filing of pleadings with the court
- Proofreading
- Creating, manipulating, copying or downloading .pdf files, CDs or zip drives
- Obtaining or reviewing general information (e.g. contact information, tax identification numbers, etc.)
- Execution of documents
- Bate-stamping and date stamping

- Follow-up on the status of documents
- Arranging travel
- Pickup and delivery of documents and records
- Telephone call attempts and retrieving voicemail messages
- File closing tasks
- Logging in the receipt of documents
- Ordering transcripts

EMC requires that only professional services be the subject of billing. There are numerous functions that are secretarial, clerical, or administrative in nature and which do not involve the knowledge or participation of legal personnel in their completion. The examples stated above typically do not require any legal skill and are, therefore, considered part of the firm's overhead.

EMC will not pay as reasonable, costs billed for the following:

- Any mark-ups or surcharges for any billed for cost or expense
- Overhead expenses including but not limited to:
  - o Office publications;
  - o Administrative fees or percentages;
  - o Charges for databases maintenance;
  - o Charges for case management system and/or software;
  - o Interest charges for past due billings.

#### **K. INVOICE AND FILE REVIEW**

1. EMC reserves the right to conduct audits and to review the defense file and/or defense bills, consistent with the defense attorney's ethical obligations to ensure the quality of legal services and compliance with EMC Guidelines. Payment of any fees or expenses by EMC does not constitute a waiver of auditing rights or related requests. These audits may be conducted at legal counsel's office or EMC may request that specific files and documentation be provided to EMC at a different location.

2. EMC requires that copies of receipts be retained in support of all billed for costs and expenses above \$25.
3. Counsel agrees to comply with all reasonable requests for information and documents, provided that such documents or information are not privileged or intended by the Insured to be confidential.
4. EMC fully reserves all rights to decline to pay or to seek reductions and/or refunds concerning charges that fail to comply with the requirements set forth herein, and which are not fully explained or documented by the Firm after reasonable inquiry.

#### **L. APPEAL PROCESS**

1. EMC reserves all rights to decline to pay or to seek reductions and/or refunds for charges in the original billing that fail to comply with these Guidelines. EMC agrees to pay the undisputed portion of statements received from counsel within thirty (30) days of receipt of the billing through the EMC Legal Invoicing system.
2. Counsel should initially contact the Claim Professional to resolve any billing issues.
3. If an agreement cannot be reached, Counsel may appeal the billing issue with the Claim Supervisor, Claim Manager and/or Claims Legal. All decisions made on appeals are final.
4. Appeal responses must address the specific line item and the related reduction. Generic responses will not be approved or accepted.
5. Appeals are not an opportunity to rewrite the initial time description with the exception of reductions for vague descriptions.

6. The appeal must be made within thirty (30) days of the date the billing is released in EMC's Legal invoicing system.

**This is an example of billing 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 with EMC with your Firm**

**ACKNOWLEDGEMENT FORM**

**I have read, understand, and will adhere to the EMC Case Handling Guidelines, Retention, and Billing Policy for outside counsel.**

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

**(Firm's Name)**

**(Signature)**

**(Date)**