

(Effective 7/1/16 Revised 10/7/2020)

Client Instructions – General Liability/Civil Rights Claims

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ORM Internal Authority Designation

ORM CGL supervisors, Chasity Caillouet and Stephanie Campbell will be the primary contact persons on all general liability/civil rights claims. ORM Supervisors will be responsible for handling the RSA process, approval of payments in excess of \$25,000 (*excluding payments to defense counsel made via Acuity/Trial Net*), requests for an attorney appointment and requests for reserve increases, etc. If the request is above ORM Supervisor's authority level, they will route it to the appropriate person within ORM. Please copy Crystal Bounds, CGL Claims Manager, on all emails to Chasity Caillouet and Stephanie Campbell. If ORM Supervisor is out of the office, Crystal Bounds will handle your requests. Contact information is as follows:

Chasity Caillouet – (225) 342 8435 - Chasity.Caillouet@la.gov

Stephanie Campbell - (225) 342 8432 - Stephanie.Campbell@la.gov

Crystal Bounds– (225) 342 8438 – Crystal.Bounds@la.gov

General

EMAIL COMMUNICATION BETWEEN TPA AND ORM

Always include the TPA claim number and the name of the claimant in the subject line. If there is a critical date or some urgency, flag as high importance and add in subject line claimant/TPA#/ (urgency); subject of e-mail such as “Trial date___ or Follow-up to RSA or reserve request, etc.

General Liability Claims Handling Guidelines

Claims Management System claim coding ORM Claim Number:

The date of loss alleged in the incident/lawsuit determines the ORM claim number. Two digit fiscal year (07/01/16-06/31/17) is 17, the number would be 17G two digit month and day of loss, first two letters of injured party's last name and 4 numbers assigned at random.

The claim is set up in the name of the injured party, coded as self, deceased, minor, other which could be parent, trustee, etc. Note should be made of the name of the filing party and the relation to injured party.

Location code (unit#) should be the four numbers at the lowest level of the facility named in the petition. Use the L number that corresponds to the facility, not the S number (Account#). The information is found on the provided excel spreadsheet; “ORM Master Location Listing – Effective X-XX-XXXX.XLS. This information is updated periodically as agency changes occur. Once claim has been set up, the location code or Unit # should

not be changed without prior authority or request from ORM. Unit #'s 9990 through 9999 should not be used without prior authority from ORM.

Claims Investigation Guidelines:

TPA is responsible to perform a thorough investigation of all claims. Claims should be investigated to allow for assessment of liability and to accurately document the claim file in order to support settlement or denial of non-litigated claims. A denial of claim may result in a suit being filed at a later date, thus documentation of the incident, statements and contact information of the involved parties and witnesses, photographs, diagrams, etc. are crucial. Even if claim is designated an incident, all evidence should be preserved.

A claim received in a litigated status does not negate the TPA's responsibility to investigate the claim and obtain needed documentation, identify involved parties and witnesses, discuss loss with agency representative and involved employees, etc.

Litigated Files:

TPA must be actively involved in the management of a litigated claim, as discussed further under the Litigation Management caption.

- Personal or telephone contact by the TPA examiner must be made with the claimants on all cases within one (1) business day of receipt of the claim.
- Contact by mail will suffice only in those instances where personal or telephone contact is not possible. This should be documented in the claim file.
- Medical releases and copies of all pertinent medical records should be requested and evaluated by TPA. This should only apply if liability is likely. Do not let issue of medical records delay the assessment of liability or claim denial, if appropriate.
- Personal or telephone contact must be made with the agency personnel having knowledge of the claim within two (2) business days following receipt of the claim.
- TPA examiner shall send contact information and TPA claim number to agency personnel via email for future communications.
- Recorded statements must be taken from the claimant and all witnesses in all cases where there is injury or where liability is questionable. Recorded statements must be summarized and included in the file notes. Reasons for not obtaining a recorded statement must be explained in the claim file notes.
- Agency investigative reports, Internal Affairs reports, Police reports, B.A.C. test results, photos, diagrams will be obtained when appropriate. Confirm that all evidence is secured and photographed by the agency (broken chairs, etc.).
- TPA will report all bodily injury claims to ISO/the Index Bureau, as soon as possible and make repeat queries on long term claims to identify any accidents that may have occurred after the subject claim.

- TPA will utilize economic experts when necessary to evaluate economic damages and will retain other experts as needed to properly defend and evaluate the claim.
- The TPA will contract with the experts identified by TPA and/or the assigned defense counsel.
- ORM is to be notified immediately if the exposure assessment or demand exceeds \$100,000.00 for all non-litigated claims.
- All claims involving significant bodily injury and/or property damage or questionable liability should be considered for independent investigation assignment. **ORM should be consulted before assignment to Independent Examiner.** All IA reports should be submitted to ORM CGL supervisor for review and discussion of further action by assigned IA.

Civil Rights Cases

The TPA examiner must contact the Human Resource (HR) department of the named agency to obtain a copy of any investigation in all employment liability cases. Wages and benefits are to be verified in all employment liability cases. Payments of lost wages and benefits are the responsibility of the named agency as they are excluded from the State Insurance Policy Provisions. TPA must provide a method to work with the agency concerning contribution to settlements or judgments.

Reserves

Initial reserves must be established within seven (7) calendar days of the receipt of the claim. Initial reserves are to be reviewed within 60 days after receipt of the claim as more is known about the claim.

ORM reserve authority is needed to increase reserves with a total incurred reserve of \$250,000 or greater. Subsequent reserve increases shall require approval by ORM. Reserve requests shall be sent in the below format to assigned ORM supervisor and Crystal Bounds for action. If the reserve request is above their authority, they will route it to the appropriate person within ORM for approval. Reserve increase requests and corresponding ORM approval shall be placed in the claim management system.

Please note that a single request may be submitted in the event that both the Loss and Expense reserves need to be increased. However, justification and reasons for both increases must be provided.

Example e-mail request to increase a single reserve bucket (i.e. Loss Reserve):

From: (TPA Examiner)
Sent: (Day, Month, Date, Year, Time)
To: (ORM Supervisor)
CC: (ORM Manger)
Subject: John Doe; TPA #: 999999; Request for Loss Reserve Increase

Please see below our request to Increase the Loss Reserves in the John Doe matter.

Current Loss reserve is: \$200,000.00
Increase Loss reserve to: \$300,000.00

Current Expense reserve is: \$100,000.00
Increase Expense reserve to: \$No increase needed

If increase(s) is (are) approved the total for all reserves on this claim will be: \$400,000.00

Reason for increase request: [Explanation and/or justification for increase(s)]

Your attention to this matter is appreciated.

Examiner Name

Example e-mail request to increase both the Loss and Expense Reserve buckets:

From: (TPA Examiner)
Sent: (Day, Month, Date, Year, Time)
To: (ORM Supervisor)
Subject: John Doe; TPA #: 999999; Request for Loss Reserve and Expense Reserve Increases

Please see below our request to increase both the Loss Reserves and the Expense Reserves in the John Doe matter.

Current Loss reserve is: \$200,000.00
Increase Loss reserve to: \$300,000.00

Current Expense reserve is: \$100,000.00
Increase Expense reserve to: \$150,000.00

If increase(s) is (are) approved the total for all reserves on this claim will be: \$450,000.00

Reason for increase request: [Explanation and/or justification needed for both the Loss Reserve increase as well as the Expense Reserve increase]

Your attention to this matter is appreciated.

Examiner Name

ORM reserve authority is not required for the following reserve changes nor should these be included on the monthly reserve report:

- **A decrease in the reserve where the total incurred is over \$250,000.**
- **Funds are shifted from one reserve subcategory to another within a reserve bucket (expense, damages), but the total incurred amount is unchanged.**

RESERVES RELATIVE TO AG PAYMENTS ONLY

For the AG payments here is how we need to handle the 4 scenarios:

1. **Open** claims with current total incurred plus AG payment < \$250k
 - a. Do not enter the payment and send to examiner to review for reserve adjustment and enter payment manually
2. **Open** claims with current total incurred plus AG payment > \$250k
 - a. Do not enter the payment and send to examiner to review for reserve adjustment and enter payment manually
3. **Closed** claims with current total incurred plus AG payment < \$250k
 - a. Automatically update the reserve to cover the payment and then enter the HIS payment.
4. **Closed** claims with current total incurred plus AG payment > \$250k
 - a. Do not enter the payment and send to examiner to review for reserve adjustment and enter payment manually

PETITIONS RECEIVED ON EXISTING NON-LITIGATED CLAIM OR AS NOTICE OF CLAIM

When a Petition or complaint for Damages (lawsuit) is received by TPA on an existing non-litigated claim or as first notice of a claim, it must be promptly referred to assigned ORM CGL supervisor for processing and for the request for assignment of defense counsel by the Office of the Attorney General (AG). ORM will complete the required Transmittal Appointment Form and submit it to the AG for appointment of counsel. If the AG appoints an in-house AAG, no concurrence from ORM is required. A copy of the Appointment will be sent via email to the TPA examiner. If the AG appoints contract counsel, the Appointment is returned to ORM for the concurrence of the Assistant Director for Litigation Management and the State Risk Director. Afterwards, a copy is returned to the AG for their records.

Upon notification of the assigned defense counsel, the TPA examiner should contact counsel within seven (7) working days to discuss the case and develop a plan of action (which includes assisting in the investigation or assigning an IA to assist) for defending the allegations contained in the petition/complaint.

DIARY

Litigated claims must be maintained on a diary to ensure that required reports are received from the defense counsel defining the status of the litigation and the plan for resolution of the litigation. Required reports must be reviewed by examiner when received and the file noted for changes, action needed and action taken. At a minimum, the TPA examiners should establish diary dates for the following:

- Initial Case Assessment – 60 days from date of counsel acceptance/assignment
- Six Month Case Assessment – 180 days from date of counsel assignment
- Ninety Days Prior to Trial – RSA due from assigned counsel

NON LITIGATED SETTLEMENTS

A release and receipt must be secured on all bodily injury claims and third party damage claims upon settlement – Regardless of the amount of settlement (excluding “glass only” when damage is less than \$500)

- **Windshield claim “Glass only”** damage claims of up to \$500 do not require a release. If there is property damage other than glass, a release must be obtained.
- All non-litigated settlement requests over \$25,000 must be approved by ORM and the AG. A settlement evaluation and recommendation form must be completed and sent to ORM for approval. ORM will then forward to the AG for final approval.
- All non-litigated settlement requests above \$250,000 require approval by ORM, the Attorney General and the Commissioner of Administration.
- All non-litigated settlement requests of \$500,000 and above require the approval of ORM, The Attorney General, the Commissioner of Administration and the Joint Legislative Subcommittee on the Budget.

NON-LITIGATED CLAIMS EXCLUDING DPS AND DOC CLAIMS

TPA will have the authority to settle all non-litigated claims up to and including twenty-five thousand (\$25,000) per claimant without the approval of the State (ORM or DOJ).

For settlements over twenty-five thousand (\$25,000) per claimant, TPA must submit a Settlement Evaluation Request to ORM for approval prior to extending the settlement. In addition, The Attorney General Settlement Concurrence Form for Non-Litigated Claims must be approved by the AG and attached to the TPA claim file before a settlement check request can be approved by ORM.

Settlement of claims for DPS and DOC is covered in another section of the client instructions as authority to settle cases for these departments differs from the norm.

LITIGATED SETTLEMENTS AND JUDGMENTS (excluding DPS and DOC Claims):

- All litigated claim settlement requests require the submission of an RSA for Attorney General and ORM approval. TPA will be notified in writing of the decision on the requested authority.
- Settlement requests above \$250,000 require approval by ORM, the AG and the Commissioner of Administration.
- Settlement Requests of \$500,000 and above require the approval of ORM, the AG, the Commissioner of Administration and the Joint Legislative Subcommittee on the Budget.
- Settlement of DPS and DOC claims is covered under another section of the client instructions.

CHECK REQUESTS FOR SETTLEMENTS AND JUDGMENTS

- The file should be documented with the amount of each settlement check requested and the payee information.
- Each Client Fund Authorization Request should include the settlement/judgment payment authority documentation. Required for payments over \$25,000.00. Authorization is not needed for legal payments.
- Client Fund Authorization Requests shall be sent to assigned ORM supervisor for action. Please copy Crystal Bounds on all Client Fund Authorization Requests.

If the Client Fund Authorization Request is above their authority, ORM Supervisor will route it to the appropriate person within ORM for approval

Third party property damage claims: In cases of liability, at least two estimates must be obtained from the claimant for damages estimated below \$1500.00. Damages estimated to be \$1500 or greater must be inspected by a material damage appraiser. If the incident involves a 3rd party's vehicle, a copy of the vehicle registration and proof of insurance will be required. Note: Property damage to privately owned vehicles not involved in a collision with a State owned licensed vehicle still requires verification of liability insurance. Liability insurance must be current as of the date of loss at or above the State required minimum coverage, per Act 1476 of 1997 Regular Session found in R.S. 32:866.

Third party vehicle damage claims for "glass only", where liability is clear, such as agency personnel grass cutting or weed eating resulting in thrown rocks at parked vehicles, are submitted by the agencies on the DA2073 (Vehicle Glass Repair/Replacement Loss Notice) directly to TPA.

MEDICAID LIENS:

- The TPA examiner or defense counsel (if case is in litigation) must obtain information as to whether or not the claimant is a Medicaid recipient.
- Obtain the claimant's date of birth and social security number. The petition needs to be attached to this request.
- Communicate Medicaid payment amounts to defense counsel and make certain it is included in the RSA. Medicaid lien amounts must be indicated on all TPA Settlement Evaluation Forms.
- When DHH asserts a claim for reimbursement as the result of Medicaid payments, ORM may delegate the negotiation of Medicaid reimbursement claims to defense attorney or the TPA Examiner.
- DHH will not negotiate with the plaintiff or plaintiff's counsel.
- The final amount of the Medicaid reimbursement will be included in settlement authority granted.

Medicaid Lien template:

PATIENT:

SSN:

DOB:

TPA CLAIM:

ORM CLAIM:

DEFENSE COUNSEL and FIRM:

PLAINTIFF COUNSEL and FIRM:

DATE OF INCIDENT:

INCIDENT DISCRPTION:

CRITICAL DATE:

ATTACHED:

MEDICARE LIENS:

- Medicare's interests must be protected as they are considered a Secondary Payer.
- Medical bills paid by Medicare must be considered for reimbursement in any settlement.
- When the claim is first received the examiner should request the claimant's date of birth and Social Security Number or HICN from the plaintiff attorney or pro se' plaintiff.
- TPA is responsible to verify Medicare Liens.

If the needed information is not voluntarily provided, the information should be obtained by counsel through discovery.

FUTURE MEDICAL CARE FUND:

- Settlements and judgments on bodily injury claims may include an award for future medical care. R.S. 39:1533.2 authorizes that the funds be paid directly to the medical provider as the expenses are incurred pursuant to R.S. 13:5106(B) (3) (c). Specific language should be included in all settlements and judgments that reference amount allocated for future medicals.
- Once the agreement is reached or there is a final judgment, the TPA examiner handling the claim will send a letter to the plaintiff attorney with instructions as to the handling of future medicals that are payable from the date of settlement forward.
- TPA has copies of the standard letter regarding payment from the Future Medical Care Fund.
- TPA handles all future medical payments. A separate future medical care fund claim must be set up by TPA and assigned to TPA examiner for handling.
- Deanna Raven with TPA handles all future medical payments. A copy of the settlement /Judgment and information regarding the injuries involved should be sent to her at Deanna.Raven@sedgwickcms.com. Telephone number is 225-268-3453.
- **Prior approval from ORM will be necessary on any requests for home renovations regardless of the total costs. In addition, it will be necessary to seek the ORM supervisor's approval for any requests for durable medical equipment that exceeds \$25,000.00**

CONSTITUTIONAL CLAIMS CHALLENGING MEDICAL MALPRACTICE CLAIMS MANAGEMENT SYSTEM STATUTES

Lawsuits containing allegations that the following Medical Malpractice statutes are unconstitutional will be handled as General Liability Claims. ORM supervisor will be listed as Crystal Bounds.

R.S. 40:1237.1 STATE OF LOUISIANA AND R.S. 40:1231.41 PATIENT'S COMPENSATION FUND

CONSTITUTIONAL CLAIMS (PCF AND ORM) "Y" Claims

Constitutional Challenges to the Statutory Limit on Damages for Medical Malpractice Cases

For non-state challenges:

The Office of Risk Management entered into an agreement with the Office of the Attorney General to provide defense for allegations involving the constitutionality of the private medical malpractice statute's limitation of damages to \$500,000. The statute is Louisiana Revised Statute 40:1231.2, et seq. handled by the Patient's Compensation Fund.

The suit is received from the Office of the Attorney General following service. A claim is set up with coverage code (Line Description) CC and location code 9996. Only a legal reserve is established for \$5,000.00. No further reserves are needed.

ORM supervisor will send the file materials and a transmittal to the Attorney General's Office for appointment of defense counsel. A cover for the materials is in the form of an Appointment. **A long term diary of six (6) months is recommended due to the fact that the movement of the case is directly connected to the Patient's Compensation file.**

The files emanating from south Louisiana will be assigned by the Attorney General to Guice Giambrone of Blue Williams in Metairie. Files emanating from north Louisiana will be assigned by the Attorney General to David Nelson in Shreveport.

The attorneys are to contact the plaintiff attorneys to determine if they are in agreement to the State intervening in the suit and filing a motion to bifurcate the merits from the constitutional issues. If there is mutual agreement, our attorney will file the appropriate motions with the court. If there is not an agreement, the defense attorney will file the motions and set them for hearing.

Following intervention and bifurcation, there remains only to wait until/if the case goes to trial and a judgment is awarded in excess of the \$500,000 statutory limit for damages. At that point, one of the two designated defense attorneys (Mr. Giambrone or Mr. Nelson) would file pleadings contesting a judgment in excess and petition for that judgment to be reduced to the "cap". There may be a Sibley hearing in conjunction if the judgment is not reduced. A Sibley hearing is a separate action involving the constitutionality of the \$500,000 statutory limit. Actuarial and economic experts are needed as the matter is brought before the courts.

If the plaintiff settles the case for an amount less than the \$500,000 cap or a judgment is rendered for less than the statutory limit; or if there is dismissal on abandonment, or a motion for summary judgment to dismiss, or voluntary dismissal, Attorneys Giambrone and Nelson will merely close their files. A Legal Contract Performance Evaluation must be completed by the TPA examiner and submitted to Ann.Wax@la.gov.

For State challenges:

As part of cases involving State health care providers, a post-panel suit may contain allegations that the State statute's regarding limitation of damage to \$500,000 is unconstitutional. The statute governing medical malpractice coverage for State healthcare providers is Louisiana Revised Statute 40:1237.1 et seq.

There should be a medical malpractice claim already in the ORM/TPA database.

The instructions for handling a State constitutional challenge are exactly the same as those for non-State constitutional challenges beginning with the second paragraph in the previous section of instructions where a separate attorney must be assigned to defend the constitutional allegations.

The only exception is that on State cases, Mr. Giambrone or Mr. Nelson will work in conjunction with the previously assigned defense attorney who is handling the merits portion of the State medical malpractice file.

Monitoring of Files Defended by Other Insurers

With respect to cases in which the State may be entitled to defense and/or indemnity by third party insurance carriers. The extent of AG/ORM appointed defense counsel's involvement in the claim would depend on the situations outlined below:

1. If a case presents potential OCP coverage, the demand for coverage (both defense and indemnification) should be made by AG/ORM defense counsel (if the claim is not yet in litigation, the demand for coverage should be made by the claims examiner).
2. Future defense of such claims should be evaluated in light of three factors – (1) the State's demand to the insurer for defense and indemnification and the response to the demand, including any reservation of rights; (2) the filing of responsive pleadings by the insurer; and (3) the policy limits of the insurer.
 - a. If the insurer denies the demand for coverage, then AG/ORM defense counsel will file appropriate responsive pleadings on behalf of the State defendants, and potentially assert a *third-party demand* against the insurer demanding defense and indemnification.
 - i. Note, any third-party demand must be approved in accordance with established procedures.
 - b. If the insurer accepts the demand with qualification and issues a reservation of rights letter, then review of the coverage reserved, the parties involved, the claims asserted and the potential exposure is required. AG/ORM counsel would, at a minimum, need to monitor the case to insure that the State's interest is protected. However, AG/ORM counsel may also need to enroll as co-counsel and assume an active role in the case if, for example, the insurer

has not agreed to accept the entirety of the defense, or if the potential exposure exceeds in the insurer's policy limits.

- i. The policy limits of the insurer should be verified and evaluated in light of the allegations of the petition. In the event plaintiff's alleged damages may exceed the insurer's policy limits, the State would have potential exposure.
 - c. If the insurer accepts the demand for defense and indemnification without reserving any rights, then the AG/ORM defense counsel should assume a monitoring role.
3. If the situation calls for AG/ORM defense counsel to only monitor the case, AG/ORM defense counsel should review the responsive pleadings filed by the insurer, in order to confirm that an appropriate appearance has been made on behalf of the state, to ensure that the insurer is acting in accordance with the unqualified acceptance of defense and indemnification, and to ensure that the defenses and procedures specific to the State are asserted. Examiners should be communicating with and receiving updates from the monitoring attorney.
 - a. If appropriate responsive pleadings have not been filed or if the insurer's counsel is not otherwise protecting the State's interest, AG/ORM defense counsel must communicate with the insurer and insurer's counsel to reconcile such with the insurer's acceptance of defense and indemnification. If, after such communication, the insurer is still not adequately protecting the State's interest, AG/ORM defense counsel may need to enroll as co-counsel to protect the state's interest, including filing all necessary pleadings, propounding required discovery, and filing any dispositive motions.
1. AG/ORM defense counsel and the claims examiner should monitor the case until the litigation is concluded, with their respective files remaining open. AG/ORM defense counsel should also ensure that appropriate indemnification has been made. Upon conclusion of the case, AG/ORM defense counsel shall submit an SF-8, "Notice of Case Closure" form, with a copy to the examiner, who can then close his/her file.

CLAIMS COUNCIL:

- A "Settlement Evaluation/Claims Council Review Form" is required on all cases presented to ORM Claims Council.
- Settlement requests over \$200,000 require the approval of Claims Council at ORM. The TPA examiner must present the case in person or by telephone. Claims Councils will be scheduled on Tuesdays of each week except for emergencies.
- The following items also require Claim Council approval with participation by Joe Roussel and written concurrence of the DOJ Senior Counsel to the Attorney General:
 - Requests for stipulation to liability

- Bifurcation
- Requests to waive a jury trial
- Authority to proceed to trial without any monetary authority
- ORM will coordinate the approval process with the Attorney General and any other required parties and TPA will be notified of the final settlement authority. The TPA examiner will be provided with notice of the final approval of such authority via an e-mail from the Attorney General's Office. **However, it must be noted that any approved settlement amount over \$500,000.00 is contingent on the approval of the Joint Legislative Subcommittee on the Budget.**

HANDLING OF DPS – PUBLIC SAFETY

Litigation:

Litigation received from DPS&C – Public Safety, herein referred to as DPS, include an OLA Assignment Form. DPS attorneys within the Office of Legal Affairs monitor their tort litigation. This form will list the name and contact information for the DPS-OLA monitoring attorney. The form requests that the TPA examiner and defense counsel information be completed and returned to DPS - OLA. It is imperative that this be accomplished. In addition, the TPA examiner and the assigned defense counsel need to communicate with the assigned DPS-OLA monitoring attorney on a regular and continual basis in order that they are kept apprised of developments in the case.

Requests for Settlement Authority:

Upon receipt of an RSA involving any agency with DPS&C Public Safety Services the following steps will be taken:

1. The TPA examiner will review the RSA for accuracy and content. [Note: A well written RSA should clearly convey all pertinent facts and information (whether favorable or unfavorable) obtained through the investigative and discovery processes to allow for a thorough and proper evaluation of liability, causation and damages.]
2. The TPA examiner will complete the Sedgwick Settlement Review Form and forward both the SSRF form and the RSA to the appropriate ORM Supervisor.
3. Upon receipt of the SSRF and the RSA, the ORM supervisor will review and evaluate both, then forward copies to Faye Morrison and the assigned DPS OLA attorney along with ORM's recommendations.
4. Once the RSA packet has been submitted to Faye Morrison and/or the DPS OLA attorney, DPS OLA will have 3 working days to provide the ORM supervisor with their input/feedback and/or approval of ORM's recommendation.

If no response is received from Faye Morrison and/or the DPS OLA attorney, ORM will make its final determination and the RSA will be processed accordingly.

Note: All agencies listed on the ORM Master Location Listing under the “Department of Public Safety (DPS)” must be submitted to DPS OLA for their input. These include but may not be limited to: Office of Motor Vehicles (OMV), Louisiana Office of State Fire Marshal, Louisiana State Police, Louisiana Gaming Control, Louisiana Liquefied Petroleum Gas Commission, Office of Legal Affairs (OLA), Louisiana Oil Spill Coordinator’s Office, Louisiana Highway Safety Commission, Office of Management and Finance.

File Closure Notice:

Upon closure of any DPS cases that bear location codes from 2210 – 2290, the “DPS/Office of Legal Affairs Closure Notice” must be completed and submitted to the assigned OLA attorney.

HANDLING OF DPS&C – CORRECTIONS CASES

PRISONER CASES

Non-litigated prisoner claims are received directly from the DPS&C – Corrections, referred to herein as DOC. **Any claim received directly from a prisoner shall be returned to DOC for processing.**

A copy of the Administrative Remedy Procedure (ARP) file must be obtained from DOC along with any investigative material for claims filed by prisoners. The ARP file should be reviewed by the TPA examiner for completeness of cited medical records, statements of witnesses, guards, etc. The record may be supplemented during the investigation at the ARP level. Once the ARP is submitted to the Court, it cannot be supplemented. Court decisions on prisoner claims are made based on the ARP record as submitted. No outside evidence may be added.

All settlements of prisoner claims, whether or not in litigation, must be submitted to ORM with a Request for Settlement. The assigned defense counsel shall solicit input from representatives of the DOC prior to submitting their requests to ORM. With regard to requests for trial authority, DOC’s input will be necessary regardless of the amount of monetary authority sought. DOC is particularly interested in those RSA’s involving Civil Rights or claims that impact prison policy and/or operations. In addition, any RSA related to high profile issues or those involving significant issues or damages also need to be forward to DOC for their input. If at any time there is any uncertainty as to whether an RSA should be sent to DOC, err on the side of caution and submit the RSA to DOC for their input. If DOC has not responded within 5 working days, the RSA or non-litigated settlement request may be submitted to ORM. ORM will notify TPA in writing of the authorized settlement amount. If the settlement amount requires approval from the

Attorney General or other parties, ORM will coordinate that approval process and notify TPA of the final settlement authority.

DOC NON-PRISONER CASES

All settlements of non-prisoner BI and PD claims that exceed \$25,000.00 whether in litigation or not must be submitted to ORM with a settlement request form. With regard to non-litigated claims, the TPA will solicit input from representatives of the DOC. As it relates to litigated claims the assigned defense attorney will solicit DOC's input. Only those claims that could potentially impact prison policy/operations or that are otherwise significant should be submitted to the DOC for their input. If a response is not received within 5 working days from DOC, the TPA will submit the RSA or non-litigated settlement request to ORM. ORM will notify TPA in writing of the authorized settlement amount. If the settlement amount requires approval from the Attorney General or other parties, ORM will coordinate that approval process and notify TPA of the final settlement authority.

SF-3 (DOJ/ORM REQUEST FOR SETTLEMENT AUTHORITY):

Upon receipt of an SF-3 RSA, the TPA examiner will closely review the RSA to ensure that all important elements of the claim and the defense are thoroughly covered, as well as to ensure that **ALL** sections of the RSA are properly completed. Before submitting an RSA to ORM for processing, it is imperative that the Examiner insures that the information within the RSA is accurate, complete and supported. Information to make note of when reviewing and submitting RSA's for ORM approval:

1. Is the information within the RSA up to date?
2. Is the information in the RSA accurate and current?
3. Does the information within the RSA clearly provide a global perspective of the overall case? (i.e. favorable information, unfavorable information, neutral information)
4. Does the RSA provide a solid review of the facts of the case from an investigative, discovery and legal perspective?
5. Does the RSA contain estimated future costs of defense: trial preparations, experts, discovery, etc.?
6. Estimated prevailing party fees if applicable.
7. Will there be an agency contribution to settlement?
8. Has filiation and/or tutorship been addressed if applicable
9. Does trial and/or mediation authority need to be addressed?
10. Is the RSA on the most updated form?
11. Does the information noted in sections of the RSA titled "XIV. Recommendations of Defense Counsel and "Requested Settlement Authority" agree?

Should the information in the RSA be incomplete, incorrect or lacking certain elements of defense preparation, the TPA examiner will communicate directly with the assigned defense counsel to seek additional information and request supplemental RSA including additional information. A copy of this query will be sent to

LitigationRSA@ag.louisiana.gov, the assigned ORM Supervisor and ORM Manager. A completed TPA Settlement Review Form with recommendations and the RSA shall be submitted to ORM within 10 working days of TPA's receipt of a completed RSA. TPA's settlement recommendation should be based on TPA's opinions of case and not defense recommendations.

Should a critical date be looming soon after receipt of an RSA needing either correction or supplementation, the examiner is to send the deficient RSA on to ORM with a label indicating that further information has been requested. This will allow ORM to commence its review in light of the critical date.

All assigned defense counsel (AAG staff attorneys and contract attorneys) shall submit a RSA in accordance with the guidelines established by the Litigation Program of the Department of Justice and ORM. In the event of exigent circumstances, the RSA must be submitted to ORM in sufficient time for ORM to evaluate and take action on the request.

RSA's prepared by an AAG should include comments from the AG section chief (and the AG regional office chief, if applicable) and then routed to the TPA examiner. The TPA will review the RSA and provide his/her comments and recommendations on the "TPA Settlement Evaluation Review Form". This form will then be submitted to the ORM Supervisor and ORM Manager via e-mail for disposition. After the ORM review process, the RSA and ORM's Claims Council Decision form, where required, will be emailed to the AG at LitigationRSA@ag.louisiana.gov, for the AG approval process. Upon concurrence by the AG, the AG's Office will notify TPA and ORM as to the approved authority. Settlements over \$250,000.00 are not final until approval has been granted by the Commissioner of Administration and the AG. Settlements \$500,000 and above are additionally contingent on the approval of the Joint Legislative Subcommittee on the Budget. Attendance by a TPA representative is mandatory at the hearing of the Joint Legislative Committee on the Budget. ORM will coordinate these approvals. No further action for settlement will be taken by TPA until all required approvals have been obtained.

RSA's prepared by contract counsel will be sent to the assigned TPA examiner. The TPA examiner will review the RSA and provide a completed TPA Settlement Review Form with recommendations, then forward to the assigned ORM Supervisor for disposition. After the ORM review process, the RSA and ORM's Claims Council Decision form will be emailed by ORM to the AG at LitigationRSA@ag.louisiana.gov for the AG approval process. The AG will notify TPA and ORM as to the approved authority. Settlements over \$250,000.00 are not final until approval has been granted by the Commissioner of Administration and the AG. Settlements \$500,000 and above are additionally contingent upon the approval of the Commissioner of Administration and the Joint Legislative Committee on the Budget. Attendance by a TPA representative is mandatory at the hearing of the Joint Legislative Committee on the Budget. ORM will coordinate these approvals and notify TPA accordingly. No action for settlement will be taken by TPA until all required approvals

have been obtained. Upon final approval by all required parties it will be TPA's responsibility to notify contract counsel of the approved action.

SF-6 (DOJ/ORM REQUEST FOR WRIT OR APPEAL)

Instructions:

- To be used when requesting authority to file an appeal or a writ application, or authority to forego the filing of same. This form shall be used for both supervisory writs and writs of certiorari.
- **While the request is pending, the Billing Attorney may not, in any case, permit the delays to seek relief lapse, and shall file all necessary pleadings to protect the State's interests.**
- Contract Counsel shall submit the completed form in an electronically editable format to the appropriate Section Chief at:

CivilRightsRSA@ag.louisiana.gov
GeneralLiabilityRSA@ag.louisiana.gov
MedicalMalpracticeRSA@ag.louisiana.gov
RoadHazardRSA@ag.louisiana.gov
WorkersCompRSA@ag.louisiana.gov

The Section Chief shall electronically transmit the form, with their written recommendations, to the LP/DOJ Director and to the Assistant Director for Litigation Management for the Office of Risk Management with a copy to litigationrsa@ag.louisiana.gov.

- LP/DOJ staff attorney shall submit the completed form in an electronically editable format to the Section Chief, or to the Regional Chief, if applicable. The Regional Chief shall electronically transmit the form, with their written recommendations, to the appropriate Section Chief. The Section Chief shall electronically transmit the form, with their written recommendations, to the LP/DOJ Director and to the Assistant Director for Litigation Management for the Office of Risk Management, with a copy to litigationrsa@ag.louisiana.gov

If an SF-6 is submitted to forego an appeal and pay the judgment, an RSA SF-3 is not necessary. Sonia Mallett – AG Litigation Director and Joe Roussel – ORM Assistant Director of Litigation will note to pay judgment in their email approving the forgoing of the appeal.

NEGOTIATION TRACKING:

Once settlement authority has been approved at all appropriate levels, the examiner shall send a copy of the "Mediation-Negotiation Summary" to defense counsel along with a written request that all offers, counter-offers and settlements be recorded on the "Mediation-Negotiation Summary" form and that the form be updated with each offer and counter-offer. Defense counsel should inform the examiner of each offer and counter and

the latest information should be posted in CLAIMS MANAGEMENT SYSTEM by the TPA examiner. If a claim is settled or negotiations end, the defense counsel shall send a completed copy of the “Mediation-Negotiation Summary” to the TPA examiner. The TPA examiner will review the form, update the Litigation Offer Section in CLAIMS MANAGEMENT SYSTEM and attach the completed form in CLAIMS MANAGEMENT SYSTEM. Throughout, this process, the TPA examiner should maintain a diary for follow-up

MEDIATION AUTHORITY

No “tentative” mediations are to be scheduled prior to the disposition of an RSA submission specifically seeking authority to mediate. Mediations shall be scheduled only after ORM approval of, and Attorney General concurrence on, a properly submitted RSA requesting authority to mediate and corresponding monetary authority.

SETTLEMENT AUTHORITY WITH MEDIATION

When defense counsel is given monetary authority with mediation authority, the TPA examiner shall inform defense counsel that authority has been granted using the following e-mail format:

Per the authority granted by ORM and concurred upon by the Attorney General’s Office, you now have settlement authority in the amount of ...(describe monetary authority granted, as well as any non-monetary authority granted: this would include any authority regarding individual plaintiff offers, Medicare and other liens, Medicaid reimbursement claims, future medical expenses payable through the Future Medical Care Fund, stipulations as to the existence of a duty and a breach thereof, waiver of a jury trial, participation in mediation, proceeding to trial, etc.....)

Unless particular circumstances or your granted authority dictate otherwise, please extend an offer in a timely manner. You must advise and update your examiner re: any offers or counter-offers extended, counter-offers received or reasons for withholding any offers, as negotiations progress, but in any case no later than 30 days from receipt of this e-mail. It is vital that all offers, counter-offers and settlements are reported to the TPA examiner as negotiations progress. This information is critical to the completion of ORM’s bi-annual reports to the Legislature.

Your cooperation is appreciated.

MEDIATION SUMMARY

At mediation, the examiner shall complete a copy of the “Mediation Summary” form documenting the offers and demands, initial settlement authority and final settlement amount along with an evaluation of the mediator and defense counsel. A copy of this form

must be attached to the file in the Claims Management System with copies also being sent to the ORM Supervisor and Manager within 3 working days. In addition, the Examiner must also insure that the Litigation Offer Section in the Claims Management System is updated to document all offers, counter-offers and settlements.

SETTLEMENT AUTHORITY WITHOUT MEDIATION

When defense counsel is given monetary authority without mediation authority, the TPA examiner shall inform defense counsel that authority has been granted using the following e-mail format:

Per the authority granted by ORM and concurred upon by the Attorney General's Office, you now have settlement authority in the amount of ...(describe monetary authority granted, as well as any non-monetary authority granted: this would include any authority regarding individual plaintiff offers, Medicare and other liens, Medicaid reimbursement claims, future medical expenses payable through the Future Medical Care Fund, stipulations as to the existence of a duty and a breach thereof, waiver of a jury trial, proceeding to trial, etc.....)

Unless particular circumstances or your granted authority dictate otherwise, please extend an offer in a timely manner. You must advise and update your examiner re: any offers or counter-offers extended, counter-offers received or reasons for withholding any offers, as negotiations progress, but in any case no later than 30 days from receipt of this e-mail. It is vital that all offers, counter-offers and settlements are reported to the TPA examiner as negotiations progress. This information is critical to the completion of ORM's bi-annual reports to the Legislature.

Your cooperation is appreciated.

The TPA examiner shall create a 30-day diary to follow-up on the e-mail and add additional diaries to obtain the latest information on negotiations until the case is resolved or negotiations are discontinued.

The TPA examiner shall enter all offers, counter-offers and settlements in the Litigation Offer section in CLAIMS MANAGEMENT SYSTEM. This information is critical to the completion of ORM's bi-annual reports to the Legislature.

CATASTROPHIC CLAIMS

Immediate notification by telephone to the ORM Claims Administrator and email to ORM Manager and Supervisor shall be made in all cases involving catastrophic injuries or damages.

RESERVATION OF RIGHTS LETTER

When it has been determined that there are alleged causes of action, or requested damages, in a lawsuit that are not covered under the policy, it is the responsibility of the TPA to send a reservation of rights letter to the following persons advising them as to the reason for non-coverage:

- The “head” of the insured state entity, agency or department named as a defendant in the petition or complaint.
- Also, any individual state employee named as a defendant in the petition or complaint.
- A courtesy copy should be sent to the general counsel of the state entity, agency or department named as a defendant in the petition or complaint.
- Finally, a copy should be sent to the assigned defense counsel.

The reservation of rights letter should be sent out no more than sixty (60) days from service of the original/amended-supplemental petition or complaint on the state agency, entity, or department and no more than sixty (60) days from receipt of the 13:5108.1 coverage letter for an individual defendant. **The reservation of rights letter must be sent by certified mail, return receipt requested. All ROR letters and documentation (certified receipt) must be attached in the Claims Management System file.** The TPA Supervisor will establish a diary system to confirm that the signed return receipt is returned and attached to the Claims Management System file.

In the event one hundred and eighty (180) days or more have elapsed since the service of the pleading on the state agency, entity, or department or the receipt of the 13:5108.1 coverage letter for an individual defendant, and a ROR letter is appropriate but has not yet been sent, the examiner shall submit a request for approval to send the late ROR letter. This request shall be sent via email along with a copy of the respective pleading(s) to the ORM Supervisor with a copy to the respective ORM Manager and State Risk Administrator – Claims. The email request must also contain the following information:

1. Is this letter for a state agency, entity, or department or a named individual?
2. What triggered the need for this recipient to receive an ROR letter? If triggered by a pleading, please state the date the pleading was served.
3. If this letter is for an individual please answer the following:
 - a. Was the individual served?
 - b. Was a 13:5108.1 coverage letter received and in claim file? Please state the date the 5108.1 coverage letter was received.
 - c. Where is letter being mailed (i.e. home, agency where employed)?
4. What is the trial date, if any?
5. What are the upcoming case deadlines, if any?
6. What is the status of discovery?
7. Has a dispositive motion been filed in the case?

The reservation of rights letters that should be utilized will be attached.

FORM A

This form is to be used when the primary claims asserted in the petition/complaint sound in tort. This letter provides the option of the defendant allowing the AG/ORM appointed counsel to defend all claims asserted (in this instance, the non-tort allegations are incidental to the tort demands).

FORM B

*This form is to be used when the primary claims asserted in the petition/complaint **do not** sound in tort. This letter **does not** provide the option of the defendant allowing the AG/ORM appointed counsel to defend all claims asserted (in this instance, the tort allegations are incidental to the non-tort demands; for example, as when the primary allegations sound in contract, etc.). **Here, the defendant must retain its own attorney to defend the non-tort allegations.***

FORM C - *to be issued when our involvement is limited to “monitoring” for a potential attorney fee award under 42 USC 1988 or other covered federal statute*

FORM D - *This form can be used in DPS & C cases involving either DOC (Prisons/inmates) or Louisiana State Police which trigger the need to issue an ROR letter.*

ORM does not provide coverage for injunctive relief, punitive or exemplary damages, intentional acts, or for acts resulting in injury that is expected or intended from the standpoint of the insured. Coverage is not provided in the event any alleged tortious conduct is found to have been outside the course and scope of employment with the state.

The Examiner should address the ROR letter to James LeBlanc, Secretary of LA DPS&C. Jonathan Vining is to receive a copy (cc) for DOC claims and Colonel Kevin W. Reeves is to receive a copy on behalf of DPS/LSP. The ROR letter should not be sent to the individual defendants’ personal address unless instructed differently by ORM.

Within the body of the ROR letter is an area that allows the examiner to fill in the Defendants’ name(s). Only list the Defendants’ names that allegations have been made against.

Note: *When the individual defendant is no longer employed with DPS&C (DOC or LSP) for any reason such as retirement, resignation, non-disciplinary removal, and/or termination, the Examiner should send the ROR letter to the individual defendant’s last known personal address with a copy (cc) to his/her counsel. The Examiner should also note in the letter to the Secretary of LA DPS&C that a separate ROR letter is being sent to the individual defendant.*

FORM E

This form is to be used when the primary claims asserted in the petition/complaint allege exposure to asbestos/silica-dust.

RESERVATION OF RIGHTS LETTERS RELATIVE TO RS 13:5108.1 REVIEWS

In those instances, where a defendant (State) is named **individually** in a suit, a 5108 review will be conducted by the Attorney General's Office to determine if a defense will be provided on his/her behalf by the Attorney General and coverage provided by the State (not necessarily by ORM). It should be noted that a 5108 review is only conducted on "individually" named state defendants and it is advisable to await the final 5108 review before submitting an ROR letter to these particular individuals. Please also note that, with the exception of DOC employees, service must also be perfected against the individually named defendant prior to an ROR letter being submitted to that individual.

Note: With regard to ROR letters submitted to an agency, please note that it is not necessary to await the final outcome of any outstanding 5108 reviews to submit these ROR letters. However, the TPA Examiner must ascertain that service has been perfected on the agency prior to sending the ROR.

DENIAL OF CLAIMS

When it is determined that the State has no liability for a loss, TPA will issue a letter of denial to the claimant which must be approved by the TPA supervisor. The denial does not need to be approved by the respective ORM supervisor, however, the assigned examiner and team lead must ensure that the denial is properly supported and documented.

In the event that a denial is appealed, the TPA supervisor on the case will review all applicable documentation and issue a supplemental letter to the claimant advising them of the final decision.

STAFFINGS

A staffing may be requested by defense counsel, ORM or the AG to discuss a plan of action on a case. The TPA examiner should attend the staffing and document the names of those who attended and the outcome of the staffing. A plan of action should state the subsequent steps in the defense of the case that were decided in the staffing. The notes and plan of action must be attached to the CLAIMS MANAGEMENT SYSTEM file within 3 working days. TPA examiner is to follow up to ensure that defense is proceeding with plan of action.

NOTIFICATIONS AND ATTENDANCE of TRIALS and MEDIATIONS

TPA must maintain a calendar of all scheduled mediations and trials. Notification must be made to the ORM supervisor thirty (30) days prior to all trials and mediations.

TPA examiners must attend trials, mediations and meetings of the Joint Legislative Subcommittee on the budget. The examiner may have to sit at the defense table with our attorney as the representative of the State in the event that a representative of the named agency is not available.

LITIGATION MANAGEMENT:

Examiners should be thoroughly engaged in the management of litigation and should work closely with defense counsel to bring about a prompt resolution of the claim.

- Examiners should make certain that written discovery (interrogatories, requests for production of documents, and requests for admissions) are propounded (sent) to plaintiff counsel very early in the life of a case. They should monitor this aspect of the defense and communicate directly with counsel to make certain it is done.
- Discovery propounded by defense counsel is to be promptly answered. If plaintiff does not respond promptly, the examiner should discuss the possibility of filing a motion to compel with defense counsel. Defense counsel is to provide a copy of the discovery responses to the examiner.
- As a general rule, written discovery should be propounded and answered by the plaintiff prior to plaintiff being deposed. Receipt of this information beforehand will assist defense counsel in preparing for the deposition.
- The timing of a deposition is important. Plaintiff should not be deposed too early, because we want to obtain as much information as possible regarding alleged injuries. It is often desirable for the injuries to mature to a degree (time for plaintiff to receive a diagnosis, treatment and, hopefully, a prognosis) before he is deposed. In most cases, a deposition should be taken from 8 to 12 months from filing suit; if not earlier (depending on how long after the incident suit is filed). **TPA examiner should not approve payment for the deposition until deposition is attached to the claim file.**
- Suggest discussing the need for, and the scheduling of, plaintiff's deposition with defense counsel. Confirm that written discovery has been sent to and answered by plaintiff. When appropriate, *ask (rather than direct or instruct)* defense counsel to take plaintiff's deposition. Document your requests. If there is disagreement or delay on the part of our defense counsel, please notify your TPA management team, as well as the assigned ORM Supervisor, Crystal Bounds, Ann Wax and Joe Roussel. The matter will be addressed accordingly.

It is TPA's responsibility to move and manage these cases. Case assessments and status updates should be returned to defense counsel if insufficient or without an adequate plan of action. Confirm conversations through a follow up email. Adjusters must have their supervisor or manager's approval prior to requesting an Updated Status Report from the assigned defense counsel.

Team Meetings

- Upon assignment of all new lawsuits received beginning January 2018 a team meeting will be scheduled per the terms below:
- **Team Meeting:**
 - 1) A meeting shall be attended by defense counsel, the TPA claims examiner, TPA team lead and the appropriate DOJ section chief (the “team”) to discuss a strategy for aggressively defending the case, including discovery to be conducted, available affirmative defenses, possible immunities, the need for and retaining of appropriate experts, and the potential for dispositive motions. Participation of the ORM supervisor is at the discretion of ORM. Team meetings in Workers’ Compensation cases, pre-litigation matters, and cases which are only being monitored for attorneys’ fees, shall be at the discretion of the DOJ section chief and ORM manager.
 - 2) The claims examiner shall schedule and coordinate the meeting, subsequently document the strategy (action plan) agreed upon, and send an email to each member of the team confirming the plan of action.
 - 3) Unless otherwise determined by the DOJ section chief and ORM supervisor, team meetings will be held via teleconference.
 - 4) This team meeting shall be held within 90 days of case assignment, or as soon as practicable thereafter, but no later than 30 days before the six-month case assessment is due. Additional team meetings shall be held as determined by the DOJ section chief or the ORM supervisor.

SUBROGATION:

- TPA must ensure that they protect the State’s subrogation interest on all claims.
- Filing of suit to interrupt prescription or filing of suit to recover the State’s interest should be requested by the TPA examiner at least ninety (90) days prior to prescription.

- All requests for the appointment of an AAG staff attorney to handle a subrogation matter will be submitted to ORM to the attention of Sherry Price along with a Subrogation Summary. ORM will prepare the Appointment and Contract Approval Form and submit it to the AG for assignment. AG will notify TPA and ORM as to the name of the appointed attorney/law firm.

For General Liability claims, authorization to waive less than 50% of our subrogation interest can be obtained from the assigned ORM General Liability supervisor. **Authorization to waive more than 50%** of our interests will require an RSA and submission to ORM claims council which shall be directed to Sherry Price at sherry.price@la.gov . A request for the appointment of an attorney to pursue/protect our subrogation lien should be directed to Sherry Price at the email address noted previously.

ABANDONMENT

An action is abandoned if the parties fail to take any step in its prosecution or defense in the trial court for a period of three years.

Refraining from actively defending a suit with the hope that plaintiff may not prosecute his claim for such an extended period is not a favored course of action, as it allows for the unnecessary accrual of interest, allows for the memory of a witness to fade (making his testimony less reliable), and creates the risk that physical evidence may be altered, destroyed, misplaced or become otherwise unusable. It is for these reasons that all cases must be aggressively defended.

The claims examiner must actively monitor the file and request status updates at the appropriate times. The examiner is responsible for insuring that the defense of the case is progressing and maturing. This limits the opportunity for possible abandonment to be considered as an option.

While electing to halt the active defense of a case (in the hope of potential abandonment) may be appropriate in some instances, such a strategy is the exception, not the norm. The following process should be utilized for all cases:

1. Cases assigned to in-house DOJ attorneys: A request for abandonment must be initiated by the defense counsel within the Attorney General's Office through the proper channels. If the Director of the Attorney General's Litigation Division determines that abandonment may be in the best interest of the litigation, the Director will forward the request to the Assistant Director for Litigation Management at the Office of Risk Management for consideration. Only the Director of the Litigation Division may make a recommendation to ORM for abandonment. Any final decision shall be communicated to the defense counsel, his supervisors, the examiner, and the examiner's supervisor.

2. Cases assigned to contract attorneys: Contract counsel should direct their requests for abandonment to the Director of the Attorney General’s Litigation Division and the Assistant Director for Litigation Management at the Office of Risk Management via email. Such requests will be reviewed by the Director of the Attorney General’s Litigation Division and ORM’s Assistant Director for Litigation Management. Any final decision shall be communicated to the defense counsel, the examiner, and the examiner’s supervisor.

3. In the event the time delay lapses and abandonment occurs, defense counsel must file a motion to dismiss on the grounds of abandonment and obtain a formal judgment from the court. Defense counsel should also inform the examiner of the anticipated court costs.

No request for abandonment is required for automatic stays pursuant to the Prison Litigation Reform Act. However, at the end of the 3-year period of abandonment, a motion to dismiss on the grounds of abandonment must be filed and a judgment of abandonment must be obtained, as provided for in number 3 above.

EXPERTS:

When the assigned defense counsel needs an expert/consultant, they will complete the Request for Expert/Consulting Services form (revised 7/30/15) and submit it to the assigned TPA for review and approval. Defense counsel will be notified by the TPA of the approval or rejection of the request. Please ensure that defense counsel completes all questions and attaches the fee schedule, curriculum vitae and W-9 to the request. This is what the form looks like. The form will be posted on the website for attorneys to access.

(REVISED 7.30.2015)

REQUEST FOR EXPERT/CONSULTING SERVICES

THIS FORM MUST BE COMPLETED BY ATTORNEY AND APPROVED BY TPA EXAMINER AND SUPERVISOR PRIOR TO ANY SERVICES BEING RENDERED.

Request Date: _____ Type of Expert/Consultant: _____

Claimant
Name: _____

ORM Claim #: _____ TPA Claim # _____

Anticipated Engagement Date: _____ Anticipated Costs: \$ _____

Name of
Expert/Consultant: _____

Company
Name: _____

Address: _____

City and State: _____

Phone: (_____) _____ E-Mail: _____

Hourly rate: \$_____ Tax I.D./Social Security number: _____

The following items must be attached to this form: Fee Schedule, Curriculum Vitae, and W-9.

COST BENEFIT ANALYSIS

Why is expert needed? _____

Expected cost to State if these services are not provided: \$_____

Description of costs to State if these services are not provided:

SCOPE OF SERVICES: (detailed description of all services that expert will provide)

Signature of Assigned Defense Attorney/Firm Name/Email Address

TPA APPROVAL:

EFFECTIVE START DATE:_____ APPROVED BUDGET CAP:\$_____

Examiner Approval (signature)/Date/Phone

Supervisor Approval/Date/Phone

Invoices for services rendered by the expert/consultant will be paid by the examiner as an expense to the claim file. If any invoice amount is reduced by the examiner, an explanation needs to be provided to the vendor and the file is to be documented with the reasons.

PERFORMANCE EVALUATION - LEGAL

PERFORMANCE EVALUATION - LEGAL FORMS

1. **Interim Performance Evaluation – Legal** form (IPE) will be completed by the handling Sedgwick examiner on cases handled by outside defense and AG staff attorneys. On a monthly basis, each Sedgwick examiner will be provided with a list of all cases that requires the completion of an Initial Performance Evaluation – Legal form. This listing will note the cases that were assigned one year ago. The second section of questions which relate to work tasks, requires that comments be made if the answer to a question is “NO”. The Sedgwick examiner will be responsible for contacting the assigned attorney in order to obtain written responses to questions answered with “NO”. Forms must be signed by the handling examiner and their supervisor. This form should be submitted to Ann Wax at ann.wax@la.gov. These forms will be completed on an annual basis until the case is concluded or reassigned to another attorney at which time the examiner would need to complete the standard Performance Evaluation – Legal form. If the evaluation is for an outside attorney, the Firm Name should be listed as the name of the law firm. There is now a separate field for the name of assigned defense attorney. If the evaluation is for an AG staff attorney, the Firm Name should be listed as DOJ/AG Litigation Program.

2. **Performance Evaluation – Legal** form (PEL) must be completed on cases handled by outside defense counsel and AG staff attorneys. This form shall be completed upon the conclusion of the case or in the event the case is reassigned to different counsel. If the evaluation is for an outside attorney, the Firm Name should be listed as the name of the law firm. There is now a separate field for the name of assigned defense attorney. If the evaluation is for an AG staff attorney, the Firm Name should be listed as DOJ/AG Litigation Program. The Total Defense Costs Paid represents attorney and legal expenses paid, not just the amount we paid the attorney for his professional services. The evaluation must be signed by the handling examiner and their supervisor. This form should be emailed to Ann Wax at ann.wax@la.gov.

APPROVAL FOR BUDGET INCREASES FOR LEGAL SERVICES

DOJ/Office of the Attorney General Staff: The Office of Risk Management has an Interagency Agreement with DOJ/Office of the Attorney General for the legal services provided by the attorneys in the Litigation Division. It will not be necessary for Sedgwick to request approval of defense budgets on cases being handled by AG staff attorneys. Sedgwick examiners do need to review billings for services rendered for excessive charges and ensure that they have received adequate documentation for their files.

Outside Counsel – Contract counsel is appointed by the AG and concurred upon by ORM. Outside counsel will be required to read the “Appointment for Professional Legal Services”

and sign the Counsel's Acknowledgment and Acceptance of Appointment. Counsel will be advised of an initial budget amount by Sedgwick. When the initial budget is nearing exhaustion or when counsel determines that additional funds are required for future tasks to be completed in order to determine liability and damages, outside counsel will submit a budget (through Acuity or paper if he is Acuity exempt) and an email or letter outlining the future tasks which will be reviewed by the examiner and their supervisor. When the budget increase request exceeds \$75,000.00, the Sedgwick examiner will forward this budget increase request, a copy of the email/letter from defense counsel as well as a current case assessment (must be within 6 months of this request) to the respective ORM supervisor along with their comments and recommendations for approval. The budget increase approval levels are:

<u>ORM Approval Levels</u>	<u>Approval Requested</u>
\$ 75,000.00 - \$100,000	ORM Claims Supervisor
\$100,000.01 - \$199,999.99	ORM Claims Manager
\$200,000 and above	State Risk Administrator – Claims, Assistant Director for Litigation Management, State Risk Director

The email format for submitting request for budget increase approval up to and including \$199,999.99 is as follows:

Subject line of email request for a budget increase should read as follows: "Claimant Name/ TPA#/ Request for Budget Increase"

RE: Request for Budget Increase
Claimant:
ORM Claim Number:
Sedgwick Claim Number:
Firm Name:
Current Budget Amount:
Requested Budget Amount:

The first paragraph should be a brief description of the loss and what legal action has been accomplished.

Second paragraph should include additional action required as well as note critical dates (hearings, trial date, etc.).

Third paragraph should include the total amount paid towards the defense of this claim the total amount of outstanding invoice, and a statement recommending that the budget be increased from \$ _____ to \$ _____.

The Sedgwick examiner will route this email to the respective ORM supervisor/manager for approval. If in order, the ORM supervisor/manager will approve it and forward the approval to the Sedgwick who will approve the budget in Acuity and send an email to the firms advising them of the increase approval.

For budget increase requests \$200,000 and above, a Memorandum is required which will be a Microsoft Word document that can be revised. Subject of email should be noted as “Claimant Name/TPA #/ Request for Budget Increase”.

The format will be as follows:

TPA Letterhead

Font will be Verdana 12 point

Modified Block style

Justified

MEMORANDUM is uppercase, bold, underscored and centered

Justified paragraphs

TO: Melissa Harris
State Risk Director

FROM:

DATE:

RE: **Request for Budget Increase**

Claimant:

ORM Claim Number:

Sedgwick Claim Number:

Firm Name:

Current Budget Amount:

Requested Budget Amount:

The first paragraph should be a brief description of the loss and what legal action has been accomplished.

Second paragraph should include additional action required as well as note critical dates (hearings, trial date, etc.).

Third paragraph should include the total amount paid towards the defense of this claim the total amount of outstanding invoice, and a statement recommending that the budget be increased from \$ _____ to \$ _____.

APPROVED BY:

Melissa Harris
State Risk Director

Date

Joseph M. Roussel
Assistant Director for Litigation Management

Date

Ann D. Wax
State Risk Administrator - Claims

Date

Please try to keep the memorandum to two pages. A copy of the Acuity budget and a current case assessment should be included along with the budget request.

This memorandum should be directed to the appropriate ORM Claims Supervisor for review. If in order, they will route it to Ann Wax to obtain the required signatory approvals, then notify Sedgwick accordingly.

REQUESTS FOR WAIVER OF FORMAL SERVICE OF PROCESS

A. Cases in Federal Court

In suits where an **individual** is named as a defendant (*this does not apply when a state department, agency or other state entity is named as a defendant*): a waiver of service of a summons is preferred and encouraged by the federal rules. Unless there is good cause not to waive such service, the individual defendant will be responsible for the expenses incurred in effecting service, as well as for reasonable expenses and attorney fees of a motion required to collect those expenses. **Accordingly, in the absence of good cause, ORM promotes a waiver of such service.** The examiner is instructed to:

- Advise assigned defense counsel of the need, in the absence of good cause, to waive service on the individual defendant.
- Instruct defense counsel to discuss this issue with the individual he is representing. Counsel should advise his client that, unless there is good cause to decline such a waiver of service, all expenses associated with effecting service, as well as reasonable expenses and attorney fees incurred by plaintiff to collect those expenses, will be the individual defendant's personal

responsibility (and not the responsibility of the state). Defense counsel shall communicate the results of this discussion (specifically, the individual's willingness/unwillingness to waive service) to the examiner. Any refusal of an individual defendant to execute a waiver of service must be properly documented in the file.

- In the event defense counsel, after discussion with his client, believes that good cause exists to not waive such service, he is to advise the examiner of same and provide a written explanation of his/her position. The examiner will forward the explanation to the **ORM supervisor**, who will then forward same to Michael Keller at kellerm@ag.louisiana.gov, and to Tunde Anima-Shaun at Anima-ShaunT@ag.louisiana.gov for review and decision.

B. Cases in State Court

In suits filed in state court, absent extraordinary circumstances, **service of process shall not be waived**. Should assigned defense counsel believe that extraordinary circumstances exist, he is to advise the examiner of same and provide a written explanation of his/her position. The examiner will forward the explanation to the ORM supervisor, who will then forward same to the **DOJ Director of Litigation** at malletts@ag.louisiana.gov and to ORM's **Assistant Director for Litigation Management** at joe.roussel@la.gov for decision.