

WEST VIRGINIA LEGISLATURE
Joint Committee on Government and Finance

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CHARLESTON, WEST VIRGINIA 25305-0610

MEMORANDUM

DATE: December 10, 2002

TO: Theodore L. Shanklin, Director

FROM: Ethelbert Scott, Jr. *ES*
Rhonda L. Combs *RLC*

SUBJECT: FOLLOW-UP REVIEW OF THE SPECIAL REPORT OF THE WEST VIRGINIA BOARD OF RISK AND INSURANCE MANAGEMENT'S (BRIM) UNFUNDED LIABILITY AND THE PROCEDURES FOR HIRING ATTORNEYS TO DEFEND THE STATE AND ALL OTHER ENTITIES INSURED BY BRIM WHEN LAWSUITS ARE FILED DURING THE PERIOD JULY 1, 2000 THROUGH JUNE 30, 2002.

In accordance with your instructions, we performed a follow-up review of the West Virginia Board of Risk and Insurance Management (BRIM) special report dated October 16, 2002. BRIM stated they would provide an explanation of why there was a significant increase in medical malpractice claims for State agencies during fiscal year 2002. This increase in medical malpractice claims was part of the reason for the significant increase of \$18,547,000 in BRIM's deficiency in retained earnings at June 30, 2002 according to BRIM's Chief Financial Officer in our special report dated October 16, 2002. BRIM also stated they would provide more detailed information regarding the procedures for hiring attorneys to defend the State and all other entities insured by BRIM when lawsuits are filed during the period July 1, 2000 through June 30, 2002. In conducting the review, we spoke with Mr. Charles E. Jones, Jr., Executive Director of BRIM. The review shows that the additional information BRIM promised to deliver was provided to us on November 15, 2002. The information BRIM provided to us is detailed below.

QUESTION #1 - What is the basis of the unfunded liability?

In our special report dated October 16, 2002, BRIM stated "the unfunded liability is the deficiency in retained earnings, which means BRIM does not have enough assets to offset their projected liabilities if all the claims would become due today." BRIM said the significant increase of

\$18,547,000 in the deficiency on June 30, 2002 was attributed to the significant increase in the estimated value of claims filed against BRIM insureds relating to the general liability insurance coverage for State Agencies and Senate Bill 3 (SB3) entities and the medical malpractice insurance coverage for State Agencies.

We asked BRIM two questions regarding the increase in medical malpractice claims filed against State Agencies. BRIM stated they do not know why the medical malpractice claims have increased so dramatically, but did say that the majority of these claims were filed against the West Virginia University Medical School (WVU). BRIM stated they would research and find the answers to these questions for the November 2002 interim meeting. The responses regarding the two questions were provided by BRIM on November 15, 2002 and are provided below.

(1) What is the reason for the significant increase in medical malpractice claims for State Agencies?

BRIM met with WVU's risk managers, Mike Gansor and Sandy Price to discuss the additional information needed to explain the significant increase in medical malpractice claims filed against WVU. Ms. Price provided a summary outlining her analysis of the WVU claims in which she stated,

"In December of 2001 the WV Legislature passed a tort reform bill for medical malpractice claims that became effective on March 1, 2002. One of the provisions of that bill requires all malpractice suits filed on or after March 1, 2002 to include a Certificate of Merit showing the claim was reviewed by an "expert witness" and there is merit to the claim. This led to a large increase in medical malpractice suits being filed in January and February 2002 to avoid the new provisions. West Virginia received notice of 17 new suits from January through March 2002 and by the end of June WVU had received notice of 26 new suits for the first 6 months of 2002. From July through September 2002, WVU received notice of 4 new claims.

I believe a large part of the increase in the number of suits filed against WVU in the first 6 months of this year was caused by the WV Legislature changing the requirements for filing suit. 17 new suits in a quarter and 26 new suits in 6 months are the highest numbers I found when I reviewed WVU's claims history for the last 4 years. Receiving notice of 4 new claims in the quarter that ended September 30, 2002 is the lowest number of suits or claims filed in any quarter since the first quarter of 1998 (the first year I reviewed).

Filing of Suits against WVU or Notice to WVU of Suits*				
Year	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr
FY 99	8	7	5	6
FY 00	9	8	7	5
FY 01	6	11	10	9
FY 02	10	8	17	9
FY 03	4			

These numbers are notices of suits being filed; the year in which they are filed is not the same as the policy year for insurance purposes.

(2) Was this increase a trend to be expected in future years or was it a one time occurrence?

Ms. Price also stated, "I also compared total incurred losses at 24 months after a policy year ends to ultimate losses for that policy year for three years - FY 92, 93 and 97 and looked at projected ultimate losses for FY 99. On average, total incurred losses at 24 months after a policy year ends is generally 45 - 55% of the total ultimate losses. If this historical analysis were to hold true, then the ultimate losses for FY 2000 could approach \$10 million dollars. However, I believe because of the change in the malpractice statute, FY 2000 cases were received and reserved earlier than normal/historical data would indicate. Therefore I do not believe that losses for FY 2000 will double between July 2002 and the determination of the ultimate losses for that fiscal year.

I then looked at numbers of claims filed and total losses per policy year from FY 93 - 00. This data indicates that although there are good and bad years and total losses increased significantly between FY 95 and FY 96, I do not believe there is a current pattern to indicate there will be a sharp continual upward trend.

Year	# of Claims	Total Losses Incurred*
FY 93	26	\$3,923,105
FY 94	40	\$1,857,138
FY 95	28	\$2,393,720
FY 96	45	\$5,394,601
FY 97	46	\$5,128,106
FY 98	33	\$5,356,005
FY 99	35	\$7,653,379
FY 00	33	\$5,081,893

***Total losses incurred = total losses paid + total losses reserved**

I will do further analysis to try and determine which policy years the change in the malpractice statute and the corresponding increase in filings in early 2002 affect."

Additional information provided by Mr. Jones regarding the two questions above was as follows:

- "WVU has experienced an increase in the severity of claims but there is no single identifiable characteristic to justify the increased severity.

- **Physician and student population have remained relatively constant.**
- **It is believed that due to the number of OB/GYN physicians leaving practice, those remaining are referring the most high-risk delivery cases to WVU.**
- **WVU is in the process of a study comparing other state teaching institutions to determine if they are undergoing similar medical malpractice claims.**
- **The medical malpractice liability coverage provided to physicians is a benefit of employment, making it difficult to assess surcharges to individual physicians who generate losses.**
- **BRIM sent loss control specialists from AIG to WVU to assist them, which Ms. Price indicated was very helpful.”**

QUESTION #2 - How are attorneys hired to represent the State for BRIM cases?

As noted in our special report dated October 16, 2002, BRIM has contracted with American International Group, Inc. (AIG) to provide claims management services on behalf of BRIM for all lawsuits filed against a State Agencies or SB3 entity regarding general liability, automobile liability, medical malpractice, property liability, and mine subsidence claims. AIG also process claims filed against State Agencies and SB3 entities covered by BRIM under general liability, automobile liability and medical malpractice insurance policies. BRIM administers all property and mine subsidence claims. As stated in the contract with AIG, BRIM has given AIG the right and duty to defend lawsuits filed against an entity insured through BRIM and the ultimate responsibility for the selection of defense counsel. AIG has selected specific law firms to be part of their panel counsel. AIG chooses firms from this panel counsel to represent the State Agencies and SB3 entities. The procedures AIG has in place to put firms on AIG's legal panel are not documented by BRIM.

We received a letter dated October 17, 2002, from Charles T. Waugh, AIG Service Center Manager, explaining the procedures used by AIG to establish a panel counsel in late 1995 and the procedures used to add a firm to the panel. Mr. Waugh sent a supplement to the October 17th response on November 8, 2002. The letter stated,

“We wish to supplement our previous letter dated October 17, 2002, concerning panel counsel retained to represent participants in the BRIM program. I will describe how panel counsel is selected, how suits are assigned and the use of non-panel counsel.

In 1995, AIGCS responded to an RFP concerning the BRIM program. The RFP requested a list of panel counsel that would be used in the program. AIGCS provided a list of law firms that we would retain to handle cases on behalf of BRIM. The list was made up of the law firms being used by BRIM through their carrier, CNA.

Certain firms already appeared on AIGCS' approved panel of firms, and these were

automatically approved for the BRIM program. The other firms were asked to complete a brief questionnaire and submit it with a firm resume to AIGCS. The submissions were reviewed with particular emphasis on conflicts, expertise, fee rates, and prior representation of BRIM. All firms had to agree to AIGCS' Litigation Management Program (see attached), which is considered one of the best in the industry. It was believed to be very important to use firms that had prior experience with the BRIM program in order to maintain a continuity of claims handling and to have an understanding of the defense philosophy established by BRIM. It should be noted that no suit is settled without BRIM's approval.

Over the years there have been requests to add firms to the panel counsel. These requests may be sent to BRIM, or directly to AIGCS. Any firm seeking approval as panel counsel must go through the review process previously described. Again, emphasis is placed on the expertise of the firm and knowledge of the BRIM program.

The BRIM program receives an average of 500 new lawsuits every year and maintains an average of 800 pending lawsuits. On many of these lawsuits, there are multiple defendants that often require the use of more than one law firm, due to conflicts of interest. There have been suits that have required the use of five or six different law firms in order to meet the duty to defend, severability and separation of insureds provisions of the insurance policies.

The selection of specific defense counsel on a specific lawsuit is first based upon a strong preference for panel counsel, a request for a specific counsel from the BRIM insured, the specialty and expertise needed for the case, and jurisdictional and venue considerations. The overall assignment philosophy is to utilize a variety of panel firms, and with input from the BRIM insured, choose the best defense counsel available for a particular case.

We have also had requests to use non-panel counsel in situations by entities and individuals that are covered under the BRIM program. For example, we use non-panel counsel to defend members of the judiciary, including the justices of the West Virginia Supreme Court, by agreement with BRIM. We have also used non-panel counsel at the request of the WV Attorney General. In 1997, when AIGCS took control of approximately 750 files, previously handled by CNA, under a Novation Agreement, we maintained the use of the original defense attorney, either panel or non-panel, whenever possible, to provide continuity of representation to our BRIM insureds.

To ensure that our customers receive consistent, high-quality legal representation, our Litigation Management Guidelines ensure the best possible results through effective planning of defense strategy, controlling legal costs, as well as the ability to meet deadlines and to quickly respond to significant case developments. In addition, legal invoices are carefully reviewed for compliance with our billing practices, which provides for legal fee billing at six month intervals. Invoices are carefully scrutinized by our claims technicians, both manually and by use of our automated Billing Analysis Program (BAR). Excessive charges are deducted prior to paying invoices with the reasons for the deductions provided to panel counsel."

We have attached a copy of AIGCS' Litigation Management Program to this memorandum.

Litigation Management Program

**Casualty and Professional Liability
Cases**



American International Companies

**American International Companies
Litigation Management Program**

Introduction

It is the policy of the member insurance companies of the American International Group to provide the finest quality defense for their insureds by achieving superior results through the most cost effective manner possible. Inherent in this policy is the objective of providing a quality defense through a long-term partnership with retained counsel. Through such a relationship, retained counsel can best understand and be responsive to these requirements.

The policies and practices set forth in this document describe the Litigation Management Program for all counsel retained by us. They are the foundation of a successful relationship between retained counsel, our insureds, and the AIG member companies. Effective and economically sound litigation management is achieved by close teamwork between the claims technician, defense counsel and, where appropriate, the insured.

The development and evaluation of each claim at the earliest time possible, and on a continuing basis, is the foundation of this management. This process requires active communication between the claims technician and defense counsel, coordination of activities and the application of common sense and good business judgment to handling litigation. Improved file handling, through close communication at every stage of the litigation process, joint decision-making upon a reasonable course of action and appropriate file documentation will enable us to achieve our goal of superior results on behalf of our insureds. This program provides the tools necessary to achieve these objectives and to further our partnership with retained counsel.

Continuing evaluation of our joint efforts to achieve these objectives is an integral part of this program. Effective joint planning of defense strategy, implementation of realistic litigation Plans and Budgets, substantive and timely case evaluations and superior results, whether as settlements or verdicts, will be regularly scrutinized.

Nothing in this document is intended to interfere with counsel's obligation to provide independent legal judgment in representing the insured. Rather, it is our desire to make the claims technician a part of that decision-making process.

I. Litigation Management

A. New Assignments

1. Case Referral

The law firm will designate one or more attorneys to receive initial assignments. Assignments made by telephone will be confirmed in writing with a copy of the claim file. With every new assignment, the claims technician will provide counsel with:

- our claim file number (with the assignment, or as soon thereafter as it is available), and
- a proposed initial litigation management plan incorporating the following:
 - a. instructions regarding initial pleadings;
 - b. summary of allegations in the Complaint;
 - c. coverage issues (for counsel's information only);
 - d. preliminary assessment of liability and case value;
 - e. critical case issues requiring resolution by claims and/or counsel; and
 - f. proposed schedule of joint activities aimed at resolving critical issues.

Attachment "A" contains the format for new case assignment letters. Specialty units may vary this format as appropriate.

The claim file number and the names of the insured and claimant must be included in all future correspondence (including cc's) and contact with our office.

2. Agreed-To Litigation Plan and Budget

(a) In the assignment letter, the claims technician will set forth a proposed plan of action covering the initial phase of the case, specifying a date by which counsel must telephone the technician to discuss this plan.

(b) In the planning conversation, counsel and the claims technician will identify and address the critical issues that must be resolved during the initial phase of the case, or such other time frame as is appropriate. It is the mutual responsibility of counsel and the claims technician to evaluate and prioritize the issues presented by the case, and to identify appropriate and meaningful activities to address these issues, including the date by which the activities will be completed. Counsel and the claims technician should also agree on a date for the next follow-up planning conversation.

(1) In Casualty Assignments:

If the resulting Agreed-To Litigation Plan differs from the proposed plan, it will be memorialized in writing by the claims technician and promptly forwarded to counsel. (See Attachment "B").

Within 5 working days following receipt of the assignment letter or revised Agreed-To Litigation Plan (where necessary), counsel will prepare a Litigation Budget covering the items set forth in that plan.

(2) In Professional Liability Assignments:

The Agreed-To Litigation Plan must be memorialized in letter form by counsel, within 5 working days of the planning conversation. The Litigation Budget should also be provided at this time. (See Attachment "B").

(c) Counsel must keep in mind that we view the litigation Budget as a financial translation of the Agreed-To Litigation Plan. It should conform to the agreed work plan and estimate the cost of completing each activity within the specified time period.

(d) In no event will counsel be reimbursed for any unilateral activity or expense incurred outside the scope of the Agreed-To Plan.

3. Reviewing and Updating Agreed-To Plans

(a) When any activity, fact, matter of discovery or other case development warrants a deviation from the current Agreed-To Plan, or when all agreed-to activities have been completed, or when the case enters or is about to enter a new or different phase, counsel will contact the claims technician by telephone and discuss these matters and their impact on the case. When appropriate, a new Agreed-To Litigation Plan (in the form of Attachment "B") and Budget will be prepared by counsel within 5 working days of the planning conversation.

(b) Counsel shall not undertake any activity until it has been agreed upon with the claims technician.

(c) In order to insure that all cases are proceeding promptly and efficiently, at least every 6 months counsel will review the current Agreed-To Plan and Budget, and communicate with the claims technician accordingly, even if no changes are contemplated. When appropriate, a revised Agreed-To Litigation Plan and Budget will be memorialized by counsel, within 5 working days of the planning conversation.

B. Reporting*

1. Agreed-To Litigation Plans in Pending Cases

(a) *In Casualty Assignments:*

In pending cases which do not as yet have Agreed-To Plans, the claims technician and counsel will discuss the critical issues remaining, and agree on the activities necessary to resolve those issues. Within 5 working days following this agreement, counsel will memorialize the Agreed-To Litigation Plan (see Attachment "B") and provide a Budget. Thereafter, counsel and the claims technician will review and adjust the plan in accordance with number A. 3. above.

(b) *In Professional Liability Assignments:*

In pending cases which do not as yet have Agreed-To Litigation Plans, counsel will contact the claims technician when the next attorney status report (ARF or ASR) is due and have a planning conversation to discuss the critical issues remaining, and agree on the activities necessary to resolve those issues. Within 5 working days following this agreement, counsel will memorialize the Agreed-To Litigation Plan (see Attachment "B") and provide a Budget. Thereafter, counsel and the claims technician will review and adjust the plan in accordance with number A. 3. above.

2. Deposition Summaries

Within 2 working days following a deposition, counsel will contact the claims technician to discuss the impact of the deposition on the current Agreed-To Plan, together with any

newly contemplated file activity. A summary of the deposition, with specific emphasis on resolution of critical issues, will be provided by counsel, even if there are no changes to the Agreed-To Plan, within 10 working days after the deposition. (See Attachment "C").

Any line-by-line deposition summary must be specifically approved by the claims technician in advance.

(a) *In Environmental or Toxic Tort Assignments Only:*

Counsel and the claims technician may agree to a plan of depositions which do not require immediate reporting. In those cases, counsel will advise the Home Office Examiner of his analysis within 10 working days following the completion of the agreed depositions, but will immediately communicate any fact or matter of discovery which may have a significant impact on the case.

3. Coverage Opinion Assignments

Coverage opinions must be rendered within 10 working days of the receipt of all necessary policy and file materials. Counsel shall promptly determine if additional materials are required and immediately request same of the claims technician. Coverage counsel in Errors and Omissions claims, or other specialized lines, should refer to the separate guidelines for those lines of business for more detailed requirements.

Within 5 working days of assignment, coverage counsel shall prepare a Budget, outlining expected areas of research or other contemplated activities, with the anticipated time and the cost therefor. This shall be immediately discussed with the claims technician for approval and memorialized in the working file.

Nothing herein precludes the claims technician in a specialty line of coverage from requesting, at an appropriate point in the case, counsel's analysis and recommendations for future action. If requested, the claims technician will advise what form the report is to take.

4. Settlement Conference and Trial Reporting

(a) Counsel shall notify the claims technician of a settlement conference or trial date as soon as the date is set, even though these dates are frequently postponed. If a date is postponed, counsel shall notify the claims technician of the new date as soon as it is established.

(b) If a matter is taken to trial, counsel will report at least twice each day to the claims technician. The results of hearings, arbitrations or other court appearances will be immediately communicated to the claims technician, with a written report provided within 48 hours.

5. Claims File Documentation

The following items shall be sent to us as a matter of course:

- (a) The Answer, any Amended Complaints, and any third-party pleadings.
- (b) Copies of pleadings or motions which are unusual or unique, not merely "boilerplate."
- (c) Release, Dismissals or Final Judgments.

Do not send us any documents or correspondence which do not have substantive impact on the conduct or evaluation of the suit.

C. Case Developments

1. Legal Defense

The development of a focused and strategically sound legal defense in support of the Agreed-To Litigation Plan is the responsibility of counsel and includes the following:

- (a) Identifying and developing all appropriate liability issues;
- (b) Bringing viable third-party actions and/or cross-claims against co-defendants;
- (c) Developing the defense of contributory or comparative negligence;
- (d) Raising causation issues to ascertain whether there is a nexus between the insured's act and the damages sustained; and
- (e) Analyzing critically the basis of all damage claims.

2. Investigation

Direction of the overall claim investigation is the responsibility of the claims technician. Investigation shall be conducted by claims personnel with guidance from counsel where appropriate. Counsel shall not conduct investigation. All requests for investigation shall be addressed to the claims technician handling the case. The claims technician will then secure the required information, using AIG Claim Services, Inc. (AIGCS) field adjusters or, in the case of specialty lines, other approved adjusting companies, as needed. Formal discovery will be utilized where appropriate after agreement by counsel and the claims technician as memorialized in the Agreed-To Litigation Plan. Any exception to the above must be specifically authorized in advance.

3. File Handling

In considering motions and depositions in connection with Agreed-To Plans, counsel shall evaluate their use to insure a positive and value-added impact on the case. Motions or depositions which do not advance the case or provide realistic strategic value should be avoided.

4. Expert Witnesses

Expert witnesses, including medical witnesses, shall not be engaged without the claims technician's prior approval. Medical examinations will be arranged by the claims technician, unless otherwise authorized.

5. Intra-office Conferences

We will not pay for intra-office conferences. We will not pay for file memoranda giving directions to staff, or any other form of intra-office conference, whether oral or written.

6. Multiple Attorney Attendances

Unless otherwise approved in advance, only one attorney is authorized to attend depositions, meetings, court appearances, etc.

7. Use of Appropriate Personnel

Counsel must assign only personnel appropriate to a particular case. For example, the Company will not pay for partner time when an associate can properly handle a particular matter. Responsibility for the matter remains with the assigned trial attorney. Attendance at substantive court appearances and depositions should be made by the assigned attorney whenever practicable.

8. File Reviews

We will not pay for repetitive file reviews caused by the use of multiple attorneys assigned to a case.

9. Research

Any extensive research project must be discussed with the claims technician in advance. Since assignments are made to firms which have been selected for their expertise in particular areas of law, we will not pay for research which is routine in nature. We will only pay for extending or revising prior research to bring it current, not as if the previous research had been conducted de novo. As a result, we expect all counsel to maintain and refer to a central research depository, such as a brief bank. We will not pay for any research project which has not referred to the depository, nor will we pay for any research project in excess of 3 hours (total) which has not received prior approval from the claims technician. It is anticipated that routine discovery motions, if approved, will not require any special research.

The results of research in matters of first impression in the locality, or which are otherwise unique or of interest, should be supplied to the claims technician. The results of any extensive research projects should be supplied to the claims technician.

10. Paralegal Services

We recognize the value of paralegal services when used appropriately to perform work in a file. However, we will not pay for either attorney or paralegal services which are clerical in nature, such as for file organization, where there is no significant value added to the case.

D. Preparing Suits For Disposition

1. Attendance at Settlement Conferences

When a settlement conference is scheduled, counsel shall confer with the claims technician to determine whether the attendance of a company representative is desirable. If it is decided that no company representative need attend, then arrangements for telephone contact with the claims technician during the conference must be established. Counsel must inform the claims technician of the date and time telephone availability is required. Telephone availability should be during our regular business hours whenever possible.

(All examiners for Miscellaneous Professional Liability, Lawyers' Professional Liability, Environmental Claims and Toxic Tort Claims are located in the Eastern time zone.)

2. Request for Settlement Authority

Requests for settlement authority must be made on a timely basis. We will not tolerate requests for authority on the "eve of trial" or the day before a settlement conference.

3. Settlement Drafts

Requests for settlement drafts must be in writing. All settlement drafts take some time to process in order to permit the necessary control and security procedures to be applied. Counsel should avoid making any promises concerning the delivery of settlement drafts without discussing same with the claims technician in advance. In those rare cases where a settlement draft is required on a priority basis, counsel shall immediately advise the claims technician of the precise date when the settlement draft is required.

4. Jury Verdicts

The decision to take a jury verdict can only be made by us, taking counsel's recommendation into consideration.

II. Billing Practices

1. Billing Rates

We must agree upon all billing rates prior to retention. Under no circumstances shall billing rates be increased on any litigation in progress. *Any rate increase shall apply only to assignments made after the rate increase has been approved by us.* Only the Manager Claims Litigation is authorized to vary any aspect of this rate agreement.

2. Flat Charges; Minimum Charges

Counsel shall not apply flat charges as part of its rate structure unless such flat charges have specifically been agreed to by us. Nor shall counsel apply a minimum charge for any activity.

3. Billing Increments

Counsel shall bill time in 1/10 hour increments.

4. Frequency of Billing

All cases shall be billed semi-annually based on the date of assignment.

5. Disbursements

Counsel shall pay small expense items and submit a billing to us when such expenses exceed \$500 in the aggregate. Individual bills over \$500 shall be submitted to us for direct payment.

6. Travel Expenses

We will only reimburse counsel for reasonable travel expenses which have been incurred with our prior permission. Only coach class airfare, moderately priced hotel accommodations and moderately priced meals will be reimbursed. We will not accept any lavish or unnecessary expenses for reimbursement. Travel expenses shall be itemized on counsel's billing, with copies of all receipts attached.

7. Meals and Entertainment

All requests for reimbursement of meals or other entertaining expense shall be individually itemized, showing persons entertained, amounts incurred and the business purpose. Under no circumstances will we reimburse counsel for the entertainment of Company employees without the express consent of the corporate officer directly supervising said employee.

8. Bill Format

Counsel shall submit bills in our standard format, itemizing each activity. (See attachment "D").

9. Activity Supplement

Counsel shall attach to each bill a completed "Activity Supplement — Breakdown of Hours and Rate" (See Attachment "E"). Preparation of the bill and Activity Supplement are overhead items. We will not honor any billings for these items.

10. Recovery of Overhead

Effective immediately, the following items will not be reimbursed, unless we have specifically agreed to accept the expenses:

- (a) Word Processing, clerical or secretarial charges, whether expressed as a dollar disbursement or time charge.
- (b) Storage of open or closed files, rent, electricity, local telephone, postage, receipt or transmission of telecopier documents, or any other items traditionally associated with overhead.
- (c) Long Distance telephone, litigation support, or any other service in excess of the amount actually expended by the firm for such service. We will not pay for any incremental amount, whether it is intended to recover the cost of equipment and hardware or not.
- (d) Photocopy charges in excess of \$.10 (ten cents) per page.
- (e) Auto mileage rates in excess of the rate approved by the Internal Revenue Service for income tax purposes.
- (f) Secretarial overtime. Where case requirements demand overtime, we will consider reimbursement on a case-by-case basis. We will not reimburse overtime incurred for the convenience of counsel or by counsel's failure to meet deadlines known in advance.
- (g) Equipment, books, periodicals, research materials, Westlaw/Lexis or like items.
- (h) Express charges, messenger services or the like, without our prior consent. We expect these expenses to be incurred in emergency situations only. Where case necessity requires the use of these services, we will consider reimbursement on a case by case basis.

11. Travel Time

When it is appropriate for counsel to bill for travel time, the time for such travel shall be separately stated and in no event shall exceed 8 hours per round trip. Where travel time is involved, billing for services in excess of 8 hours per day must be specifically approved in advance.

III. Performance Evaluation

In order to insure that superior results are achieved in the most cost-effective manner, AIG is committed to the ongoing evaluation of services provided by its retained counsel, by measuring substantive performance in such areas as:

- **Effective planning of defense strategy in cooperation with the claims technician;**
- **Controlling litigation costs by implementation of realistic litigation Budgets in support of Agreed-To Litigation Plans;**
- **Ability to balance the opposing demands of litigation to achieve the best result;**
- **Ability to meet agreed-to deadlines for file-specific activities;**
- **Ability to focus and prioritize investigation and discovery activities in order to properly evaluate liability and damages in a timely and consistent manner;**
- **Ability to adequately and promptly respond to significant case developments;**
- **Consistency of case conclusion with defense strategies adopted throughout the stages of litigation;**
- **Consistent compliance with the billing requirements of this Program.**

Counsel will be measured against other counsel handling similar matters within the same geographic area.

IV. Definitional Section

As used in Attachment B of this document, the following terms have the following meanings:

VERDICT VALUE: The reasonably anticipated range of likely damages (100%) to be awarded if the case is tried to conclusion before a judge or a jury, including all elements of damage recoverable in such an action.

APPORTIONMENT OF FAULT: The estimate of the likely assignment of responsibility between Plaintiff, all defendants and any others to whom the trier of fact is permitted to allocate fault.

NET EXPOSURE OF INSURED: That portion of the verdict value for which the insured may ultimately be held responsible.

CURRENT SETTLEMENT VALUE: That figure which will reasonably dispose of the matter, including all future responsibility, (a) on behalf of all parties and (b) on behalf of the insured only.

List of Attachments

- A. Assignment Letter**
- B. Agreed-To Litigation Plan - Pending Cases**
- C. Deposition Report**
- D. Bill Format**
- E. Activity Supplement**

Attachment A

Assignment Letter

Re: (Case Name)
Insured:
Claim Number:
Date of Loss:
Venue:

Attached is a Summons and Complaint in the above styled matter, together with a copy of the pertinent parts of our file. We request you represent the interests of _____, our insured in this matter. This writer will be handling this matter to its conclusion. Please direct all future correspondence to my attention, utilizing our above file number.

A proposed Litigation Plan is set forth below. It is intended to address only the immediate case handling needs. Please telephone me no later than _____ at _____ so that we may discuss the critical issues affecting liability and damages, and, if necessary, prepare a more extensive plan to address these issues. Once this plan has been agreed to, (we) (you) will memorialize the plan and within 5 working days you will prepare a Budget to implement our plan.

In the event any fact, event or case development causes a change in the activities necessary in this matter, you must discuss them with this writer in advance, and we will agree upon what further activities are appropriate. In no event will we reimburse you for any activity or expense you have incurred outside the scope of our Agreed-To Plan.

1. Initial Pleadings. In order to protect our insured's interests, please [*here add specific instructions regarding an appearance, Answer, motion, etc. Also, advise here if initial activities should be limited due to ongoing negotiations, etc. Always indicate a date by which any activity will be completed or further reviewed.*]

2. Allegations of the Complaint. The essential allegations of the Complaint are [*here summarize the specific allegations, characterize the theories of liability, describe the relief sought, special damages, etc.*]

3. Coverage. [*here indicate policy limits, any excess letters sent, reservations of rights raised with the insured, disclaimer of coverage (as for punitive damages), confirm loss dates within policy period, covered location, etc. If any coverage issues remain unresolved, identify them and provide a date by which resolution is expected. NOTE: It must be clear that this information is provided for counsel's information only, and that no action is expected by counsel with regard to coverage issues.*]

4. Preliminary Assessment

[In Casualty Cases:]

At present, we estimate that this case involves a *[remote, possible, probable]* likelihood of liability on the part of our insured, with a verdict value damage exposure of \$ _____.

[In Professional Liability Cases:]

At present, we view the overall exposure of the insured as _____.

[In all cases]

The above is a preliminary assessment of this claim based upon the information presently available. It is not our final evaluation and is subject to revision as facts and circumstances change.

5. **Critical Issues.** The preliminary estimates stated above are contingent upon resolution of the following critical issues: *[here prioritize in separate subparagraphs all issues whose resolution would enable you to evaluate the case (e.g., 'A. Does the lease require the insured to remove snow?')]*.

6. **Investigation and Discovery.** Our investigation thus far has disclosed *[here summarize completed investigation facts]*. Our further investigation and discovery should focus on the critical issues identified above as follows:

Issue:

Activity

Responsibility

Due By

[Here, briefly refer to each critical issue listed in prior paragraph, state what is to be done, in what priority, by whom, and by what specific date, e.g., "We will take the statement of plaintiff's neighbor by March 15", or, "You will research the availability of the lost profits damage remedy being claimed by March 15". Also, suggest a date for the next scheduled planning conference call].

7. **Other Comments.**

Attachment B

[Form of Agreed-To Plan Document]

Date:

To:

From:

Re: Insured:
Claimant:
Claim Number:
Date of Loss:
Venue:

AGREED-TO LITIGATION PLAN

This will confirm our conversation of _____ during which we agreed that the critical issues currently presented by the above-captioned file will be handled as follows:

1. Summary of Facts

*(Here state a summary of the salient facts, including but not limited to:
How the accident occurred
Allegations/Cause of action against insured
Injuries /damages*

This section should indicate how these facts have been confirmed (deposition, witness statement, medical reports, etc.)

2. Critical Issues

As agreed, the following are critical issues:

Critical Liability Issues:

Critical Damages Issues:

Other Critical Issues:

[List the critical issues in order of priority]

3. Investigation and Discovery

The investigation and/or discovery required to resolve the above critical issues consists of

the following: *[List each activity to be taken to resolve each of the critical issues.]*

Activity	Responsibility	Due By
<i>(List the specific investigation and/or discovery steps to be taken to resolve each of the critical issues set forth above)</i>	<i>(State here who will be responsible for completing the step, e.g., claims or legal)</i>	<i>(State here the date by which the activity is expected to be completed)</i>
AND the results exchanged)		

Issue:

Should a change in this strategy become necessary, we will contact you to discuss any necessary alterations to this plan. In any event, we suggest scheduling our next planning conference call on *[suggest date]*.

4. Litigation Budget

Attached is our Litigation Budget detailing all activities we expect to perform in connection with this Agreed-To Litigation Plan. A new budget will be forthcoming when we memorialize our next Agreed-To Litigation Plan for this case.

5. Analysis

In Casualty Cases:

As agreed, this case presently appears to involve a *[remote, possible, probable]* likelihood of liability on the part of the insured. Further, we agreed this case presently appears to have a verdict value of \$ _____, with a likely apportionment of fault of _____, leaving a net exposure of the insured of \$ _____, with a current settlement value of \$ _____. *[Please see Definitional Section of The Litigation Management Program for further information. Also, here address any settlement discussions or possibility of settlement, etc.]*

In Professional Liability Cases:

We have discussed the following areas as they apply to this case and have agreed: *[Discuss each section or advise "Not Applicable"]*

(a) Joint & Several Liability:

(b) Punitive/Multiplied Damages

(c) Assessment of Co-Defendant Liability/ Insurance Coverage

(d) Non-Economic Damages and other statutory damage caps

(e) Public Policy considerations

eg., Deceptive Trade Practice Act, Handicap Act, Statutory violations

(f) Governmental Regulatory considerations

eg., RTC, Licensure Board Proceeding parallel to the suit, etc.

(g) Other considerations

Here include any matters not covered by the above specific to this case, such as Insured's Consent, etc.

Very truly yours,

Attachment C

DEPOSITION REPORT

To:
From:
Re:
File No:
Claim #:
Date:
Date of Deposition:

I. Characterization of Deponent

Witness Name:
Address:
Relation to Parties
Effectiveness as a witness

II. Testimony Bearing on Critical Issues to be Resolved

Indicate Critical Issues as "Resolved" if no further activity is contemplated with respect to them.

- 1.
- 2.
- 3.

III. Additional Significant Testimony

IV. Analysis

In Casualty Cases:

Based on this/these deposition(s), we have agreed this case presently appears to involve a [remote, possible, probable] likelihood of liability on the part of the insured. Further, we agreed this case presently appears to have a verdict value of \$ _____, with a likely apportionment of fault of _____, leaving a net exposure of the insured of \$ _____, with a current settlement value of \$ _____.

[Please see Definitional Section of The Litigation Management Program for further information. Here discuss any settlement negotiations and feasibility of settlement.]

In Professional Liability Cases:

Based on this/these deposition(s) , we have discussed the following areas as they apply to this case and have agreed: [*Discuss each section or advise "Not Applicable"*]

(a) Joint & Several Liability:

(b) Punitive/Multiplied Damages

(c) Assessment of Co-Defendant Liability/ Insurance Coverage

(d) Non-Economic Damages and other statutory damage caps

(e) Public Policy considerations

eg., Deceptive Trade Practice Act, Handicap Act, Statutory violations

(f) Governmental Regulatory considerations

eg., RTC, Licensure Board Proceeding parallel to the suit, etc.

(g) Other considerations

Here include any matters not covered by the above specific to this case, such as consent of the insured, etc.

Attachment D

Letter/Bill Head of Law Firm

Date of Bill ___/___/___

ADDRESSEE
(Including Name of Examiner
and Handling Claim Office)

RE: Caption of Law Suit:
Name of Court and Docket No.:
Name of Insured:
Name of Claimant:
Claim File No.:
Date of Loss:
Attorney's File No.:

Part I.			
Date Activity Performed Performing Activity	Details of Legal Activity Performed Time Expended*		Person

Part II.
Total time expended for each person:

Hourly rate for each person:

Fee for Legal Activity: \$ _____

Part III.
Itemized costs/disbursements:**

Costs/Disbursements Total: \$ _____

Part IV.
Total

Grand Total of Bill: \$ _____

*Recorded increments of 1/10's of an hour
**Receipts or verifications attached to bill

Attachment E
Billing Activity Supplement
Casualty / Professional Liability

Activity	Hours	Rate	Hours	Rate
Total Fees				
Administration				
101 Organize File *				
102 Serve or Deliver Documents *				
103 Stipulations				
104 Supervisory File Review				
105 Travel Time				
File Opening				
106 Acknowledge File/Prepare Initial Budget				
107 File Opening				
108 File Review				
Answer & Demand				
109 Answer				
110 Written Discovery/Interrogatories/Demand for Discovery				
111 Schedule/Adjourn Discovery & Depositions				
112 Stipulation Extending Time				
Coverage Opinion				
113 Research - Coverage				
114 Writing Opinion				
Pleadings				
115 Prepare Pleadings other than Answer				
116 Review Pleadings				
117 Stipulations				
151 Third party Impleader				
Memo of Law				

119 Research - Memo of law					
----------------------------	--	--	--	--	--

120 Writing Memo					
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Motions					
----------------	--	--	--	--	--

121 Motion to Pleadings/Motion to Dismiss/Demurrer					
--	--	--	--	--	--

122 Discovery Motion					
----------------------	--	--	--	--	--

123 Summary Judgment (substantive)					
------------------------------------	--	--	--	--	--

125 Other Motions					
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(*) This category is intended for those exceptional cases where prior approval for the listed service has been granted.

Activity	Hours	Rate	Hours	Rate	
	Total Fees				

Depositions					
--------------------	--	--	--	--	--

126 Attorney Preparation					
--------------------------	--	--	--	--	--

127 Witness Preparation for Deposition					
--	--	--	--	--	--

128 Conducting or Attending Deposition					
--	--	--	--	--	--

129 Preparing Narrative Report					
--------------------------------	--	--	--	--	--

130 Preparing Line by Line Summary					
------------------------------------	--	--	--	--	--

131 Motion to Compel Deposition					
---------------------------------	--	--	--	--	--

132 Scheduling/Adjourning Depositions					
---------------------------------------	--	--	--	--	--

Discovery Other than Depositions					
---	--	--	--	--	--

135 Review Opposing Discovery					
-------------------------------	--	--	--	--	--

136 Prepare Affirmative Discovery					
-----------------------------------	--	--	--	--	--

137 Contact with Client for Discovery					
---------------------------------------	--	--	--	--	--

138 Review Affirmative Discovery					
----------------------------------	--	--	--	--	--

139 Report on Discovery					
-------------------------	--	--	--	--	--

140 Summarize Discovery (other than a Report)					
---	--	--	--	--	--

Document Discovery					
---------------------------	--	--	--	--	--

141 Review Documents					
----------------------	--	--	--	--	--

142 Attend Document Discovery					
-------------------------------	--	--	--	--	--

143 Prepare Documents for Discovery					
-------------------------------------	--	--	--	--	--

Database Activities					
----------------------------	--	--	--	--	--

144 Indexing/Coding					
---------------------	--	--	--	--	--

145 Data Retrieval					
--------------------	--	--	--	--	--

146 Data Input					
----------------	--	--	--	--	--

147 Other Database Activities					
-------------------------------	--	--	--	--	--

Joint Defense Committee					
--------------------------------	--	--	--	--	--

148 Joint Defense Committee Activities including Meetings					
---	--	--	--	--	--

Settlement Negotiations					
--------------------------------	--	--	--	--	--

149 Settlement Conferences (other than court) Meetings	re: settlement and/or telephone				
calls re: negotiation					

Telephone Time					
-----------------------	--	--	--	--	--

150 Telephone Time					
--------------------	--	--	--	--	--

Court Appearance					
-------------------------	--	--	--	--	--

For Motions Other than Discovery					
---	--	--	--	--	--

152 Motions - Preparation Time					
--------------------------------	--	--	--	--	--

153 Time in Court					
-------------------	--	--	--	--	--

For Discovery Motions					
------------------------------	--	--	--	--	--

154 Preparation Time					
----------------------	--	--	--	--	--

Activity	Hours	Rate	Hours	Rate	
	Total Fees				

For Discovery Motions (Continued)					
--	--	--	--	--	--

155 Time in Court					
-------------------	--	--	--	--	--

For Pretrial Conferences/Settlement					
--	--	--	--	--	--

156 Pretrial Conferences- Preparation Time					
---	--	--	--	--	--

157 Time in Court					
--------------------------	--	--	--	--	--

Trial Time					
-------------------	--	--	--	--	--

158 Trial Preparation					
------------------------------	--	--	--	--	--

159 Time in Court					
--------------------------	--	--	--	--	--

Arbitration/Mediation					
------------------------------	--	--	--	--	--

160 Preparation Time					
-----------------------------	--	--	--	--	--

161 Time at Hearing					
----------------------------	--	--	--	--	--

162 Pre-Arbitration or Mediation Statement					
---	--	--	--	--	--

Correspondence					
-----------------------	--	--	--	--	--

163 ASR/ARF/Agreed-To Plan Letter (**)					
---	--	--	--	--	--

164 Status Reports					
---------------------------	--	--	--	--	--

165 Internal Memorandum					
--------------------------------	--	--	--	--	--

166 Other Correspondence					
---------------------------------	--	--	--	--	--

167 Receive/Review Mail					
--------------------------------	--	--	--	--	--

168 Prepare Documents other than Pleadings, Motions, Stipulations or Releases					
--	--	--	--	--	--

Research					
-----------------	--	--	--	--	--

169 Consulting Brief Bank/Updating					
---	--	--	--	--	--

170 New Research					
-------------------------	--	--	--	--	--

Conference/Meeting Time					
--------------------------------	--	--	--	--	--

171 Intra Office Conference *					
--------------------------------------	--	--	--	--	--

172 Client Conference					
------------------------------	--	--	--	--	--

173 Other Conferences					
------------------------------	--	--	--	--	--

Appeal					
---------------	--	--	--	--	--

174 Writing Brief & Replies					
--	--	--	--	--	--

175 Oral Argument					
--------------------------	--	--	--	--	--

W.C. Hearing					
---------------------	--	--	--	--	--

176 Attend Hearing					
---------------------------	--	--	--	--	--

178 Review of Medical Reports/Records					
--	--	--	--	--	--

Closing Activities					
---------------------------	--	--	--	--	--

179 Release/Slip					
-------------------------	--	--	--	--	--

180 Other Closing Activities					
-------------------------------------	--	--	--	--	--

181 Reopen					
-------------------	--	--	--	--	--

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Activity	Hours	Rate	Hours	Rate	
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Total Fees

Insurance Policy Evaluation					
------------------------------------	--	--	--	--	--

182 Review Policies					
----------------------------	--	--	--	--	--

Experts					
----------------	--	--	--	--	--

183 Review of Expert Reports					
-------------------------------------	--	--	--	--	--

184 Conferences With Experts					
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Hours Not Classified					
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000 Hours Not Classified					
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SUM OF HOURS BY RATE					
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(*) This category is intended for those exceptional cases where prior approval for the listed service has been granted.

(**) New; this category applies to all required reporting formats.