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**CLAIMS COMMITTEE MEETING  
AGENDA**

**Thursday, July 23, 2020  
1:30 p.m.**

**Zoom**

**Please Contact Katie Sullivan for Videoconference Information**

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In compliance with the Americans with Disabilities Act, if you need a disability-related modification or accommodation to participate in this meeting, please contact Katie Sullivan at (916) 244-1164 or [katie.sullivan@sedgwick.com](mailto:katie.sullivan@sedgwick.com). Requests must be made as early as possible and at least one full business day before the start of the meeting.

Documents and materials relating to an open session agenda item that are provided to the Pooled Liability Assurance Network (PLAN) JPA Board of Directors less than 72 hours prior to a regular meeting will be available for public inspection online at [www.planjpa.org](http://www.planjpa.org).

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|--------------------|---|
| <b><u>Page</u></b> | <b>1. CALL TO ORDER</b>   |
|                    | <b>2. INTRODUCTIONS</b>   |
|                    | <b>3. APPROVAL OF AGENDA AS POSTED (OR AMENDED)</b>   |
|                    | <b>4. PUBLIC COMMENTS</b> - The Public may submit any questions in advance of the meeting by contacting Katie Sullivan at: <a href="mailto:katie.sullivan@sedgwick.com">katie.sullivan@sedgwick.com</a> . This time is reserved for members of the public to address the Committee relative to matters of the Claims Committee not on the agenda. No action may be taken on non-agenda items unless authorized by law. Comments will be limited to five minutes per person and twenty minutes in total. |
|                    | <b>5. CONSENT CALENDAR</b><br>If a Committee member would like to discuss any item listed, it may be pulled from the Consent Calendar.  |
| <b>4</b>           | <b>*A. Minutes from the May 28, 2020, Claims Committee Meeting</b><br><i>Recommendation: Staff recommends the Committee approve the Consent Calendar.</i>   |

\* Reference materials enclosed with staff report.

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**6. CLAIMS MATTERS**

A. Consideration of Litigation Management Guidelines

*Recommendation: Staff recommends the Committee approve the Litigation Management Guidelines and adopt the max rate.*

**7. CLOSED SESSION**

A. Pursuant to Government Code Section 54956.95(a), the Committee will hold a closed session to discuss the following claims:

- Tony Chan, D.T. McKee Petroleum Corp. v. Town of Atherton
- Yasmin Jenkins v. City of East Palo Alto Police Officers
- Jane R.L. Doe c/o Evers Law Group, APC v. City of Pacifica
- City of Pacifica Mold Claim ABGV26707A9

B. Pursuant to Government Code Section 54957.1, the Committee will report in open session any reportable action taken in closed session.

**8. CLOSING COMMENTS**

This time is reserved for comments by Claims Committee members and/or staff and to identify matters for future Claims Committee business.

- A. Claims Committee
- B. Staff

**9. ADJOURNMENT**

**NOTICES:**

- The next Claims Committee meeting will be held on August 27, 2020, at 1:30 p.m. via videoconference.

\* Reference materials enclosed with staff report.

July 23, 2020

Agenda Items 5.A.

**CONSENT CALENDAR**

**SUBJECT: Consent Calendar**

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**BACKGROUND AND HISTORY:**

The Consent Calendar consists of items that require approval or acceptance but are self-explanatory and require no discussion. If a Committee member would like to discuss any item listed, it may be pulled from the Consent Calendar.

**STAFF RECOMMENDATION:**

*Staff recommends the Committee approve the Consent Calendar.*

**REFERENCE MATERIALS ATTACHED:**

A. Minutes from the May 28, 2020, Claims Committee Meeting

**POOLED LIABILITY ASSURANCE NETWORK JOINT  
POWERS AUTHORITY  
(PLAN JPA)**

**MINUTES OF THE CLAIMS COMMITTEE  
MEETING OF MAY 28, 2020**

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A regular meeting of the Claims Committee was held on May 28, 2020, via videoconference.

**MEMBERS PRESENT:** Kathleen Kane, Chair, Burlingame  
Brenda Olwin, East Palo Alto  
John Mullins, Hillsborough  
Robert Schultz, Los Gatos  
Donald Larkin, Morgan Hill (*Left during 5.A, Returned during 6.A*)  
Marc Zafferano, San Bruno  
Rebecca Mendenhall, San Carlos

**MEMBERS ABSENT:** Scott Corey, Suisun City

**OTHERS PRESENT:** Jon Paulsen, General Manager  
Katie Sullivan, Assistant General Manager  
Will Portello, Litigation Manager  
Susan DeNardo, Litigation Manager  
Greg Rubens, Board Counsel

**1. CALL TO ORDER:**

The Regular Meeting of the PLAN JPA Claims Committee meeting was called to order at 1:34 p.m.

**2. INTRODUCTIONS:**

Roll call was taken and it was determined there was a quorum present.

**3. APPROVAL OF THE AGENDA AS POSTED (OR AMENDED):**

*The agenda was approved as posted.*

**4. PUBLIC COMMENTS:**

None.

**5. CONSENT CALENDAR:**

*Rebecca Mendenhall moved to approve the following items: A) Minutes from the April 23, 2020, Claims Committee Meeting. John Mullins seconded the motion. A roll call vote was taken and the motion passed unanimously by Kathleen Kane, Brenda Olwin, John Mullins, Marc Zafferano, Robert Schultz, and Rebecca Mendenhall.*

**6. CLAIMS MATTERS:**

The Claims Committee is vested with the authority to maintain and amend a panel of qualified counsel to represent PLAN JPA members in matters that may be covered under PLAN's Memorandum of Coverage.

Will Portello, Litigation Manager, informed the Committee he had compiled five years of panel data, along with subjective evaluations pertaining to various panel counsel and those attorney's representation of PLAN members in litigated matters to assist in updating the PLAN JPA Defense Panel. He stated an ad-hoc committee should be created to review the findings and evaluations and make recommendations to the Claims Committee.

After a brief discussion, the Committee directed staff to research how an ad-hoc committee would be appointed.

*Robert Schultz moved to approve the creation of an ad-hoc committee for defense panel review. Brenda Olwin seconded the motion. A roll call vote was taken and the motion passed unanimously by Kathleen Kane, Brenda Olwin, John Mullins, Donald Larkin, Marc Zafferano, Robert Schultz, and Rebecca Mendenhall.*

**7. CLOSED SESSION:**

A. The Committee convened to closed session, pursuant to Government Code section 54956.95(a) at 1:44 p.m. to discuss the following claims:

- Tony Chan v. Town of Atherton
- Jane R.L. Doe c/o Evers Law Group, APC v. City of Pacifica
- Susan Lee Trustee of the Godsoe Family Trust v. City of Pacifica, Sierra Mountain Construction, Inc.

B. Pursuant to Government Code Section 54957.1, the Committee reconvened to open session at 2:39 p.m. The following actions were taken under closed session:

*No reportable action was taken during closed session.*

**8. CLOSING COMMENTS:**

**A. Claims Committee**

None.

**B. Staff**

Jon Paulsen, General Manager, informed the Committee staff reviewed the Bylaws and determined the Bylaws are silent regarding formation of an ad-hoc committee. Greg Rubens, Board Counsel, concurred and stated interested Claims Committee members could reach out to staff to inform of their desire to participate on the ad-hoc committee.

**9. ADJOURNMENT**

The Regular Meeting of the PLAN JPA Claims Committee was adjourned at 2:42 p.m.



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Katie Sullivan, Assistant Board Secretary

**July 23, 2020**

**Agenda Item 6.A.**

**CLAIMS MATTERS**

**SUBJECT: Consideration of Litigation Management Guidelines and Maximum Hourly Rate for Approved Panel Counsel**

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**BACKGROUND AND HISTORY:**

In accordance with best practices, staff has prepared Litigation Management Guidelines to ensure proper oversight of panel counsel. The purpose of the Litigation Management Guidelines is to ensure competency, avoid conflicts of interest, and properly manage litigation in a way that ensures the best possible outcome, while controlling legal costs and expenses. The proposed Litigation Management Guidelines are similar to those imposed by insurance carriers on defense counsel, with notable differences that reflect staff's experience in conducting and managing litigation.

The Litigation Management Guidelines establish policies and procedures applicable to the Approved Panel Counsel for handling claims for PLAN by requiring Approved Panel Counsel meet the requirements as summarized below:

1. Approved Panel Counsel must certify they have no ethical or legal conflicts that would disqualify them from representing members, and they must uphold the highest standards of professionalism and ethics. The Approved Panel Counsel must refrain from initiating any adverse action against any PLAN members. Counsel must report circumstances which affect the reputation of themselves, their firm, or any of their employees such as ethics complaints, criminal charges and convictions, or court opinions that raise questions as to their ethics.
2. Counsel must also keep the Member, TPA's Supervising Claims Program Manager, Claims Adjuster, and Litigation Manager assigned to the claim up to date on the status of the matter by providing copies of all correspondence and pleadings, and timely communicating new developments. These communications shall also include all notices of depositions, trial, arbitrations, and hearings. At the beginning of the case, Counsel must ascertain individuals to whom the case must be reported including the excess coverage provider and confirm the matter has in fact been reported.
3. A case analysis and litigation budget is required within 60 days of retention of each case. The Litigation Management Guidelines include the form that must be used by counsel for the Initial Case Analysis Report. The Initial Case Analysis Report shall also include a budget with the estimated anticipated legal costs and fees. Importantly, Approved Panel Counsel are warned that if the Litigation Budget has been exceeded no further payment of their fees will be made until a revised budget has been submitted and approved by the TPA's Supervising Claims Program Manager or Litigation Manager. Unexplained deviations from the Approved Panel counsel's analysis or budget will be considered when approving counsel's performance.
4. Status reports are required every sixty (60) days from submission of the Initial Case Analysis and describing only new developments since the previous report. Information contained in the

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Initial Case Analysis and subsequent status reports, including the date, should never be deleted, even if the information is later found to be incorrect. Approved Panel counsel must identify the incorrect information and discuss any modifications. Counsel's bills for legal fees and costs may not be approved unless status reports are provided on a timely basis.

5. Approved Panel counsel is required to obtain prior approval from the Supervising Claims Manager, Litigation Manager, and Member before making any settlement offer, and shall notify the same and the excess carrier within 24 hours of receiving a demand from the opposing party(ies).

To help ensure efficiency, the Litigation Management Guidelines include guidance and restrictions on staffing by Approved Panel Counsel, utilization of telephonic appearance where available for hearings, submission of monthly invoices for fees and costs, and preapproval for use of experts. Law firms frequently use multiple attorneys, paralegals, and other staff on a single case, which can increase legal fees associated with the defense of a case unnecessarily. The Litigation Management Guidelines require a maximum of one associate be assigned with a partner from the inception to conclusion of a case.

To protect PLAN and its members, Approved Panel Counsel are required to take steps to protect against unauthorized disclosure, including in storage and transmittal, of claim or case information. Approved Panel Counsel are required to inform the Member if there is any breach or unauthorized disclosure of such information. In addition, Approved Panel Counsel is prohibited from talking to the media about claims or cases without the affected Member's consent. Finally, Approved Panel Counsel are required to comply with the record retention policy included in the Litigation Management Guidelines.

To confirm these guidelines are being followed by Approved Panel counsel, the Litigation Manager and/or the TPA's Supervising Claims Program Manager will periodically conduct audits of litigation files being monitored by PLAN. The audit can include billings and may be completed by an independent auditor if selected by the Oversight Committee with input from the Litigation Manager and the TPA's Supervising Claims Program Manager.

Finally, the Litigation Management Guidelines contain several policies that will assist in the overall assessment of litigation, trends and data metrics. The Guidelines require the use of standard industry codes for time entries by attorneys with respect to the specific services billed. Using standardized billing codes will allow staff to collect data necessary to assess not only the specific trends within a certain firm, but benchmarks against other defense counsel and overall case costs and analysis, as well. A self-performance survey is also implemented, to initially be prepared by defense counsel, with a responsive assessment by the TPA and Litigation Manager.

PLAN JPA's Claims Committee requested the Litigation Management Department seek feedback from the PLAN JPA Approved Panel Counsel regarding these guidelines. The Litigation Management Department has requested PLAN Approved Panel Counsel provide that feedback. While there were not large number of responses from Panel Counsel, the feedback was positive

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overall. There were a few questions regarding coding and approved costs which the Litigation Management Department has answered.

The Litigation Management Guidelines include Exhibit E – Approve Panel Rates. The Litigation Management Department has considered appropriate billable rates and makes the recommendation of a maximum rate of \$230.00 per hour for PLAN JPA Approved Panel Counsel.

**STAFF RECOMMENDATION:**

*Staff recommends the Claims Committee approve the Litigation Management Guidelines and the maximum hourly rate for PLAN JPA Panel Counsel of \$230.00 per hour.*

**REFERENCE MATERIALS ATTACHED:**

- Draft PLAN Litigation Management Guidelines



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## **Litigation Management Policy**

### **Policies and Procedures for the Handling of PLAN Matters**

#### **Vision Statement:**

Expertise. Economy. Consistency.

#### **Mission Statement:**

The purpose of this PLAN Litigation Management Policy (“LMP”) document is to adopt formal policies and procedures, as set forth in the Litigation Management Guidelines below, applicable to the Approved Defense Counsel Panel (hereinafter “Approved Panel”) in handling matters for PLAN and the oversight thereof. To control legal costs and expenses without sacrificing case results or increasing settlements and verdicts, it is in the best interest of PLAN to ensure that matters assigned to Approved Panel counsel will be handled in a uniform, strategic, and cost effective manner. It is crucial to a successful litigation management strategy that Approved Panel counsel comply with this LMP and the Litigation Management Guidelines therein.

#### **I. Purposes/Expected Outcomes**

PLAN pursues its goal to insure competency, avoid conflicts of interest, and control legal costs and expenses by:

- Requiring Approved Panel counsel to analyze and certify that they have no ethical or legal conflicts which would in general disqualify them from representing the Member;
- Requiring Approved Panel counsel to maintain certain objective professional and ethical standards;
- Requiring Approved Panel counsel to meet certain objective mandatory case handling standards, including uniform reporting ;
- Requiring Approved Panel to comply with uniform billing guidelines;
- Requiring Approved Panel to obtain approval for certain costs including retention of experts;
- Requiring Approved Panel counsel to participate in a post-case evaluation at no cost to PLAN; and
- Requiring Approved Panel counsel to submit to an audit of legal fees and expenses in any PLAN matter to verify compliance with the Litigation Management Policy.

#### **A. Conflicts**

The Approved Panel counsel selected and the law firm to which he/she belongs must certify that they have no ethical or legal conflicts which would in general disqualify them from representing any PLAN

Members. In addition, they shall certify that they will refrain from initiating any adverse action against any PLAN Members including but not limited to the filing of a complaint or cross complaint during the time that they are included on the Panel and accepting Approved Panel work from PLAN.

Further, Approved Panel counsel must disclose the existence of any potential or actual past or present conflicts. They must also disclose whether they have previously or are currently representing a party in any legal action against any member of PLAN, even if they have not previously acted as Approved Panel counsel for the particular Member involved in the matter at issue.

Finally, Approved Panel counsel shall agree to disclose any special facts which would or potentially could disqualify them from representation of a particular Member at the time of or shortly after the case assignment or immediately upon discovery of such facts.

#### **B. Professional/Ethical Standards**

Approved Panel counsel shall represent the interests of PLAN and its Members in a manner that upholds the highest standards of professionalism and ethics.

Approved Panel counsel shall adhere to all federal and state laws, court rules, and professional standards in the handling of matters on behalf of PLAN and its Members.

PLAN reserves the right to terminate Approved Panel counsel relationships based on circumstances that may impact the reputation of Approved Panel counsel, PLAN, or its Members. Approved Panel counsel must promptly self-report circumstances in which the ethics or reputation of Approved Panel counsel, their Firm, or any of their employees is called into question. Reportable issues include but are not limited to the following:

1. Formal ethics complaint against any employee of the law firm filed with a court or licensing board with jurisdictional oversight of the law firm.
2. Public reprimand, censure, or other adverse decision in response to an ethics complaint.
3. Criminal charges brought against any employee of the law firm.
4. Criminal conviction of any employee of the law firm.
5. Publication of any opinion or order that raises ethical issues unfavorable to the law firm.

#### **C. Correspondence and Pleadings**

Approved Panel counsel shall provide copies of all correspondence and pleadings to the Member, TPA's Supervising Claims Program Manager, and claims adjuster assigned to the case. For those cases which fall within the purview of the Litigation Manager, copies shall also be provided to the Litigation Manager. At the outset of litigation, Approved Panel counsel shall confirm with the Member the identity of the appropriate person(s) with whom they should communicate regarding all aspects of litigation including settlements. The Member should update Approved Panel counsel if their contact person(s) changes.

In the event that there are excess reporting requirements, Approved Panel counsel shall ascertain whether or not the case has been reported by the claims adjuster to the excess coverage provider. If not, Approved Panel counsel shall report such case immediately upon assignment.

After a case has been reported to one or more excess coverage providers, Approved Panel counsel shall ensure that additional copies of all correspondence and pleadings are forwarded to such excess coverage provider(s).

Approved Panel counsel shall promptly respond to all correspondence or phone calls from the Litigation Manager and keep him or her fully advised as to the progress of each case. Approved Panel counsel shall cooperate with the Litigation Manager in all other aspects of this LMP including the completion of expert

witness and plaintiff counsel evaluations and providing copies of motions and resource documents that pertain to the case. Failure to comply with this section may result in the reduction or rejection of legal invoices.

**D. Depositions, Trials, Arbitrations, and Hearings**

Notice of depositions, trials, arbitrations, and hearings shall be sent to all parties above who are to receive copies of correspondence.

**E. Case Analysis and Litigation Budget**

Within 60 days of retention in each case, selected Approved Panel counsel shall complete and return an **Initial Case Analysis Report** (“ICA”) (**Attachment A**) to the appropriate contacts, including but not limited to, the Member, TPA’s Supervising Claims Program Manager, and claims adjuster. The Initial Case Analysis Report is attached to this policy and incorporated herein as though fully set forth. The purpose of the Initial Case Analysis Report and subsequent status reports is to clearly notify the evaluator of the factual and evidentiary strengths and weaknesses in defending against the allegations. Significant, unexplained, substantive deviations in Approved Panel counsel’s analysis will be taken into account when evaluating counsel’s performance.

At the same time and in conjunction with the Initial Case Analysis Report, Approved Panel counsel shall provide a comprehensive plan and projection of anticipated estimated legal costs via the **Litigation Budget**, which is attached to this Litigation Management Policy as **Attachment B** and incorporated herein as though fully set forth. The Litigation Budget shall be completed by Approved Panel counsel to be submitted as part of the Initial Case Analysis. If Approved Panel counsel becomes aware that the Initial Case Analysis or Litigation Budget is inaccurate, Approved Panel counsel, as soon as reasonably practicable, shall submit an updated Initial Case Analysis and/or Litigation Budget along with Approved Panel counsel’s recommendation for an increase or decrease, where appropriate. The Litigation Manager and TPA’s Supervising Claims Program Manager will closely monitor the basis for any Litigation Budget increases. **If the Litigation Budget has been exceeded, no further payment of fees will be made until a revised Litigation Budget has been submitted and approved by the TPA’s Supervising Claims Program Manager or Litigation Manager.** Significant deviations from the Budget will be taken into account when evaluating Approved Panel counsel’s performance.

**F. Mandatory Status Reports**

Status reports are mandatory and to be submitted at least every sixty (60) days from submission of the Initial Case Analysis. The Approved Panel counsel assigned to handle a matter should prepare all status reports. The reporting timeline may be extended if the TPA’s Supervising Claims Program Manager and Litigation Manager are notified of Approved Panel counsel’s need for an extension and proposed new deadline. Approved Panel counsel shall report only on new developments since the previous report. The Initial Case Analysis form is intended to be used as the foundation and strategic map for all further reporting. By way of the reporting format, it is the intent of PLAN that reporting compliance, strategy, and development of the litigation be gleaned from the current report. Therefore, information contained in the Initial Case Analysis and subsequent status reports, including the date, should never be deleted, even if the information is later found to be incorrect. Approved Panel counsel must identify the incorrect information and discuss any modification.

Approved Panel counsel must also clearly distinguish current reporting from subsequent reporting. For example, the current date and information should be in a different colored font or the text should be highlighted so as to distinguish current information from prior reporting. In addition to following the required format, all status reports shall identify any material developments, including how they impact liability or the Initial Cases Analysis. Deposition and medical record summaries, or the like must, be sent

under separate cover and should not be set forth in the ICA or subsequent status reports. The ICA format is for succinct information, which impacts the liability and potential exposure analysis.

The Initial Case Analysis, Litigation Budget and revisions thereto, and Mandatory Status Reports are critical to PLAN'S ability to accurately reserve and assess each case, evaluate settlement opportunities, and control costs. Failure to timely submit these reports will be taken into account by PLAN when evaluating Approved Panel Counsel's performance. **Approved Panel Counsel's bills for legal fees and costs may not be approved unless status reports are provided on a timely basis.**

Furthermore, no later than 60 days prior to a mediation, arbitration or trial, the Approved Panel counsel will provide an updated ICA/status report and Litigation Budget. **Mediation briefs and trial briefs do not satisfy this requirement** as such documents are not intended to assist the TPA's Supervising Claims Program Manager or Litigation Manager in accurately assessing reserves, strategy, potential exposure or controlling costs. With regard to updating the Litigation Budget, Approved Panel counsel must identify attorney fees and costs to date, along with the estimated fees and costs through trial. Within thirty (30) days of the conclusion of mediation, Approved Panel counsel shall complete and return a **Mediator Performance Evaluation** form (**Attachment C**).

It is expected that cases will proceed to trial as expeditiously as possible. Approved Panel counsel shall obtain the TPA's Supervising Claims Program Manager and Litigation Manager's approval prior to continuing the trial date set by the court. No less than a week prior to mediation, arbitration or trial, Approved Panel counsel shall confirm the date with all counsel and notify the Litigation Manager and TPA's Supervising Claims Program Manager of the same.

#### **G. Further Evaluations and Reserves**

Upon request by the assigned adjuster, the Supervising Claims Manager, the Litigation Manager, or any excess coverage provider, and whenever any significant developments occur, and at such other times as deemed necessary by Approved Panel counsel, Approved Panel counsel shall provide supplemental written or oral evaluations of the case. These evaluations shall disclose any weaknesses or strengths of the case that have been discovered, any increase or decrease in anticipated costs, any recommended change in reserves, and, if pertinent, any settlement recommendations.

#### **H. Settlements**

Approved Panel counsel shall not settle any matter by way of monetary offering without the prior approval of the Supervising Claims Manager, Litigation Manager, and Member. Approved Panel counsel shall notify the Supervising Claims Manager, Litigation Manager, Excess Carrier, and Member of any settlement as soon as practicable not to exceed 24 hours. In no event should Approved Panel counsel discuss case resolution with the media prior to contacting the Member, Litigation Manager, and PLAN Administrator.

#### **I. Staffing**

PLAN expects that the designated panel attorney will have ongoing and detailed involvement in all litigated matters. While PLAN encourages and understands that staffing and efficiency involves the use of associate attorneys on various aspects of litigated matters, the use of multiple associates often results in duplicative work and excessive time spent on tasks within a case. Consequently, PLAN expects that no more than one associate attorney be assigned to the matter at the inception and identified in the Matter Acknowledgement Letter. Absent approval of the TPA's Supervising Claims Program Manager and after consulting with the Litigation Manager, additional associates should not be involved in the litigation of the file. File review or preparation by additional attorneys should not be billed.

The use of Paralegals and Law Clerks ("Law Clerk" being a student enrolled in law school, a law student during summer breaks, or after graduation during a period of time that individual is not admitted to

practice) can be an efficient and effective approach to litigation. PLAN encourages the use of Paralegals and Law Clerks for appropriate tasks. As with associate attorneys, the matter should be staffed appropriately so as to avoid unnecessary steps for such individuals becoming familiar with the case and issues. Paralegals and Law Clerks should be utilized when possible for routine discovery preparation, document preparation and review, document production organization, and approved research assignments when appropriate.

PLAN recognizes that judicious use of intraoffice conferences and communications between attorneys or between attorneys and law clerks or paralegals assist in the management, analysis, and quality of representation. In the event fees are sought for the expenditure of time in such conferences, only the time of the senior timekeeper should be billed. The time entry must clearly reflect the attendees at the conference, and the subject of the conference. No time should be billed for intraoffice conferences between attorneys and support staff, including secretarial staff. If, in the opinion of the assigned adjuster, Supervising Claims Program Manager, or Litigation Manager, the charges incurred for intraoffice conferences are unwarranted, or excessive in a matter, payment for those charges may be declined, and/or the authorization to bill for the time expended in such conferences may be withdrawn.

#### **J. Telephonic Appearances**

Unless approved in advance, counsel must utilize telephonic appearance options for routine case management appearances further than 25 miles from counsel's office, including Case Management Conferences, ADR Reviews, and Status Conferences. With respect to appearances at motion hearings where the client is **not** either seeking or opposing the motion, appearances outside of the 25 mile radius from counsel's office should be limited to telephonic appearances when available. Telephonic appearances are neither expected nor desirable for appearances at motion matters in which the client is the moving party or the opposing party. Arrangements for telephonic appearances should be made a sufficient time in advance to avoid "rush" charges.

#### **K. Fees, Costs and Billings**

All bills for legal services and related costs shall be submitted through the assigned claims adjuster to the TPA's Supervising Claims Program Manager. Unless otherwise approved in writing by the TPA's Supervising Claims Program Manager, invoices should be submitted monthly, within thirty (30) days after the end of the month in which the services were rendered. The final bill must be identified as such and submitted within forty-five (45) days of dismissal or last fee incurred. For those cases which fall within the purview of the Litigation Manager, copies shall also be provided to the Litigation Manager.

Separate invoices should be submitted for legal fees and expenses. Expenses and advanced costs should be clearly identified, and submitted as an "Expense" invoice.

Invoices for legal services should utilize standard **Uniform Task Base Management System (UTBMS) Litigation Codes (Attachment D)** for each time entry. Each task should include both an L-Code, and an activity code (A-Code). Each discrete entry on an Expense invoice should include an E-Code. The system used, either at the timekeeper or invoicing level, must be capable of generating an Excel format export of the invoice or time record, for use of PLAN in analyzing litigation data.

Where more than one professional is involved in the same work project, such as writing a brief or summarizing documents, the details in the invoice should make it clear why the other person or persons' input was necessary. A summary by each professional providing services during that billing period, showing (i) the total time spent by that professional, (ii) the billing rate for that professional, (iii) the position of that professional (e.g., Partner, Third Year Associate, paralegal), and (iv) the total charges for that professional should be included. With regard to lengthy projects which continue over months (e.g., motion for summary judgment), the total fees and disbursements for the specific project must be included

in the invoice. Total fees and disbursements from the inception of the case to date should be included on each invoice.

The following expenses must be approved by the TPA's Supervising Claims Program Manager after consulting with the Litigation Manager or, if appropriate, by the Litigation Manager before being incurred:

1. Experts – whether investigative (consulting) or testimonial.
2. Independent/approved/qualified medical or mental examinations.
3. Outside investigators.
4. More than one attorney at meetings, interviews, depositions, hearings, appearances or other like engagements.
5. Travel out-of-town or outside designated area for investigation – e.g. for depositions, meetings with expert witnesses, etc.
6. Filing of cross-complaint or counter-claims.
7. Research in preparation for the filing of demurrers and motions.
8. Voluntary settlement conferences or ADR methods.
9. Co-defendant cost sharing agreements.
10. Preparation and filing of demurrers, motions or any writ or appeal.
11. Videotaped depositions.
12. Individual expenses expected to exceed \$500.00, including copying expenses.
13. Legal research projects expected to exceed four (4) hours.

Approved Panel counsel shall not bill for duplicate services performed by more than one person unless specifically authorized by the Supervising Claims Manager, or if appropriate, the Litigation Manager. ***There shall be no block billing accepted for payment. Vague and non-descriptive task entries will not be honored.*** All charges for expenses shall be based on actual costs. No blanket charge for office expenses, administrative charges, or the like shall be accepted for payment.

Approved Panel counsel submitting the bill is responsible for the content of the bill and will work directly with the assigned adjuster or Litigation Manager in resolving any problems or answering any questions.

Rates per hour or per project shall not exceed the amount approved by the Claims Committee as set forth in **Attachment E**. Rates per hour or per project within the approved rate will not be increased without at least ninety (90) days advanced written notice to the Litigation Manager and the Supervising Claims Manager, and only after receiving written permission for such rate change from the Litigation Manager.

Invoices for legal fees and costs, or specific entries therein, may be rejected or reduced for various reasons, including but not limited to, the following:

1. The hourly rate exceeds the rate per hour approved by PLAN;
2. Failing to submit a Litigation Budget and/or provide timely updates when a submitted Litigation Budget is no longer accurate;
3. Failing to obtain written authorization for expenses as required by this LMP;
4. Failing to attach written authorization to the invoice in which payment is requested.
5. Block billing. Block billing is the practice of assigning a one-time charge to multiple tasks. An example looks like this: “August 5, 2017: Telephone conferences with client regarding deposition. Prepare for deposition. Travel to and attend deposition. 7.00 hours.”

6. Excessive fees for form or standardized documents. PLAN recognizes that the use of Judicial Council form pleadings, as well as modification of pre-existing pleadings, is a standard practice and a cost-saving measure. However, the time billed should not exceed the actual time expended in preparation of the document. Accordingly, time entries for the following documents should not exceed “.1” without prior authorization from the Litigation Manager:
  - a. *Form Interrogatories*;
  - b. *Notice of Entry of Order*;
  - c. *Supplemental Interrogatory*;
  - d. *Supplemental Demand for Inspection of Documents*; and/or
  - e. *Demand for Exchange of Expert Witness Designation*.
7. “Chipping”. Chipping is the practice of dividing two related tasks that typically take fewer than six minutes, then splitting them into separate entries and billing each task separately. An example of chipping would be the receipt of a brief email, and a short attachment, when the total time for review of both is fewer than six minutes, then billing the email as one entry of “.1” and the attachment as another “.1” entry;
8. Routine cover correspondence accompanying enclosures;
9. Duplicative work by multiple attorneys;
10. Fees or Costs that were incurred in violation of the policies or procedures set forth in this document;
11. Failing to submit billing in a timely manner; and/or
12. Fees or costs are excessive, not reasonable or necessary, as deemed by the Litigation Manager after consulting with the TPA’s Supervising Claims Program Manager.

Notwithstanding other guidelines or direction, **without prior written approval**, the following out-of-pocket expenses are not acceptable and shall not be billed to or paid by PLAN:

1. Secretarial/clerical functions including scheduling (regardless of who performs them)
2. Time devoted to preparation of bills including accompanying cover letters;
3. Time devoted to bill dispute resolution including accompanying cover letters;
4. Time devoted by a second attorney to become familiar with a file due to the assigned attorney’s unavailability.
5. Charges for WestLaw or LexisNexis research;
6. In-House Photocopies;
7. Volume copying done by outside vendors;
8. Scanning;
9. Data entry & storage;
10. Courier service charges (i.e. messenger services, overnight delivery – FedEx, UPS, etc).
11. Telephone and fax;
12. Mobile devices and data charges;
13. File opening and closing activities;
14. Completion of conflicts checks;
15. Storage and retrieval of files (on-site or off-site);
16. Any markups or surcharges added by the law firm including interest;

17. File organization and maintenance, including filing, tabs, creating of notebooks and Binders;
18. Indexing pleadings, discovery, medical records and correspondence;
19. Bates numbering;
20. Routine scheduling of depositions and meetings;
21. Proofreading documents;
22. Personal local transportation or parking (within 25 miles of the firm's closest office);
23. Books, Subscriptions, Educational expenses;
24. Docket systems (such as PACER);
25. Professional associations;
26. Bar dues;
27. Local transportation (mileage within 20 miles of the firm's closest office);
28. Commuting expenses including parking, overtime and after hours transportation;
29. Local meals (no meal charges when travel is completed in a single day);
30. Entertainment;
31. Rent;
32. Furniture;
33. Employee salaries including overtime;
34. Typing and word processing;
35. Office supplies;
36. Research concerning basic aspects of the Code of Civil Procedure, California Rules of Court, Federal Rules of Civil Procedure, the 1 Rules of Court for either California Superior Courts or Federal District Courts, or filing procedures in any court;
37. Completion of Attorney self-evaluations; and/or
38. Intraoffice conference billing by more than one timekeeper.

#### **L. Expert Retention Requests**

With regard to the approval of experts or medical examiners, Approved Panel counsel shall submit an **Expert Retention Request form (Attachment F)** attached hereto and incorporated herein as though fully set forth herein. The Expert Retention Request should be submitted in stages as according to the anticipated need of Approved Panel counsel. PLAN will not pay for expert fees that have not been authorized in advance. Once approved, Approved Panel counsel shall issue the expert a confirming retention letter which substantially provides the following:

*It was a pleasure discussing the issues involved in the above entitled case. We are pleased to inform you that PLAN has agreed, on behalf of [Name of Member], to retain your services as an expert in this matter. In accordance with our discussion, PLAN requires us to confirm a budget for expert consultations. At this time, you have been pre-approved for [Number of Preapproved Hours] hours [(\$approved amount)] to perform an initial investigation and assessment. We anticipate that your initial investigation and assessment will include, but is not limited to, [Nature and scope of assigned initial investigation assessment] and a preliminary oral assessment of your findings.*

*PLAN will only provide payment for pre-approved services. Thus, if, after you commence your review, you determine that [Number of Hours Approved] hours is an insufficient amount of time to conduct a necessary investigation and assessment, you must contact me before you commence any work beyond the approved [Number of Hours Approved] hours. Again, without further pre-approval, PLAN will not pay for any services you*

*perform beyond the instant pre-approved for [Number of Preapproved Hours] hours [(\$ approved amount)].*

Using the format above, a confirming retention letter shall be sent to an expert each time the Request is modified and approved. Within 30 days of the conclusion of a matter or discovery of substantive information, Approved Panel counsel shall complete the PLAN Defense Expert Witness and/or PLAN Plaintiff Expert Witness Evaluation(s), **Attachments G and H**, respectively, attached hereto and incorporated herein as though fully set forth herein.

**M. Confidential Information**

Counsel must take steps to protect PLAN claim information from unauthorized access, acquisition, disclosure, loss, destruction or damage, including ensuring that hard copy and electronic materials are transmitted and stored in an appropriate fashion including the use of encryption or other similar technologies when appropriate. Counsel must limit access to Member information to only those individuals who have a business need to access Member Information. Counsel must inform the Member promptly if there is any unauthorized access, acquisition, disclosure, loss, destruction, or damage of Member information.

**N. Record Retention**

Except as otherwise provided by federal and state law, Approved Panel counsel shall maintain assigned litigated case records for not less than seven (7) years after the litigation is concluded, two (2) years for non-litigated cases, and ten (10) years for claims involving Medicare-set-asides or for which provisions for future Medical has been agreed-upon related to Medicare.

**O. Audit of Approved Panel Firms**

From time to time, the Litigation Manager and/or the TPA's Supervising Claims Program Manager may elect to conduct audits of the litigated files being monitored by PLAN, including billings for legal services being performed by the assigned Approved Panel counsel or individual Approved Panel counsel's firm. The Litigation Manager reserves the right to order an independent legal bill audit if, in his or her discretion, the billings do not comply with these Litigation Management guidelines or are excessive or unwarranted. Payment of any invoices shall not constitute a waiver of PLAN's right to seek reimbursement of any inappropriate or excessive billings disclosed by an independent audit or otherwise. If an independent legal bill audit is ordered, the Oversight Committee, with input from the Litigation Manager and the TPA's Supervising Claims Program Manager, shall determine who shall pay for the legal bill audit.

**Attachment A**  
**INITIAL CASE ANALYSIS REPORT**

## PLAN CASE ANALYSIS

This report is to be received by the Member, the TPA's Supervising Claims Manager, the assigned claims adjuster (and if applicable Litigation Manager and excess carrier(s)) within **60 days** of claim/suit transmittal. It is expected that this report will be utilized for **ALL** status updates, notification of material developments and mediation, settlement conference and trial reports. When providing updates, prior information, even if later discovered to be incorrect, should **NEVER be deleted**. Counsel should provide updated information in a manner such that the evaluator will be able to easily identify the updates and understand their importance and relationship with previously reported information (e.g., strike through incorrect information, new information in a different color font or highlighted).

To (*the Responsible Attorney is expected to know who should be included in the communications*):  
 From/Responsible Attorney: (*unless otherwise agreed to in writing, the Panel Counsel assigned by PLAN*)  
 Date of Assignment:  
 Date:

LAWSUIT AND CLAIM INFORMATION	
<b>Date Assigned:</b>	
<b>PLAN Claim No.:</b>	
<b>Excess Claim No(s).:</b>	
<b>Plaintiff(s) DOB/Age/MSA:</b>	
<b>Date of Loss:</b>	
<b>Date of Claim(s):</b>	
<b>Claim Demand:</b>	
<b>Date &amp; Type of Response to Claim(s):</b>	
<b>Case Caption:</b>	
<b>Date of ICA and status reports</b>	
<b>Date of 1<sup>st</sup> attempt to resolve the matter</b>	
<b>Date(s) of service of CCP 998s or Rule 68 offers</b>	
<b>Date(s) of MSC:</b>	
<b>Date(s) of Mediation:</b>	
<b>Initial and continued trial dates</b>	
<b>Assigned Judge:</b>	

Excess notification required? Yes \_\_\_ No \_\_\_

If yes, notified, provide date of notification, excess claim number(s) and excess contact information.

Represented Party(s), including SIR:

Insurance:

Other insurance policy(ies) of other parties: (Provide name of insurer, type of policy and limits.)

Is indemnification or contribution available? Yes \_\_\_ No \_\_\_

If so, against whom?

Is there any additional information or documentation needed to preserve evidence or establish defenses? Yes \_\_\_ No \_\_\_

If so, please delineate.

Status of pleadings:

(Include date of service of complaint and list of recommendations (e.g., demurrer, motion to strike, summary judgment, etc.).)

Does the complaint conform to the claim? Yes \_\_\_ No \_\_\_

If not, in what respect does it differ?

Outcome of any pre-litigation events to date (including claims, investigations, meetings, hearings, etc.):

Currently planned or scheduled litigation events (including meetings, motions, hearings, discovery, depositions, etc.):

Event Type	Scheduled/Anticipated Date	Outcome/Comments

**Status of settlement negotiations:**

(Include amount, date, type (formal or informal) and response; if a specific amount was requested in the Tort Claim, such amount should be identified)

**Plaintiff/Claimant:**

**Transit:**

**Other parties:**

**Overall Theme to be presented by Defense Counsel:**

**Anticipated Trial Date if not resolved:**

**Probability of going to Trial:**

**Trial Counsel/Firm for Plaintiff:**

(Provide name and describe firm size, background, specialization, trial experience, available resources, and general appraisal of capability)

**I. STATEMENT OF FACTS** (A succinct and realistic recitation of facts is expected. Counsel should identify key facts as well as points of dispute. )

**II. LIABILITY** (Counsel should provide an overview of the allegations, causes of action, and burden of proof. Early evaluation of liability exposure is desired, and should reflect likely outcome based on available information with respect to all parties. Counsel should provide recommendations to mitigate the liability exposure.)

**III. INJURIES/DAMAGES** (An overview of injuries and damages is expected. Counsel should identify key damage facts and points of dispute.)

**Special Damages:**

	Past – Claimed	Future – Claimed	Comments & Evaluation
Medical Expenses			
Lost Wages			
Other			

**General Damages:**

(Include pain and suffering; scarring/disfigurement, loss of business interruption/opportunity, loss of consortium, property damages, etc.)

**Punitive Damages:**

(Counsel should provide identify the party(s) that punitive damages are sought against, along with supporting allegations.)

**IV. ISSUES:**

(Counsel should identify issues that impact the resolution or handling of this case.)

**V. EVIDENTIARY ISSUES** (Counsel should provide an overview, assessment and recommendations regarding any unique evidentiary issues that are expected to impact the resolution or handling of this case.)

**VI. CASE EVALUATION & SETTLEMENT VALUE**

(Based on the information in the case to date, counsel should state the values in the case – ranges may be used. If the evaluation changes over the course of litigation, the reasons for the modification should be clearly identified in the report.)

**What is the pure exposure value** (based on information to date)? \$ \_\_\_\_\_ (OVERALL)  
\$ \_\_\_\_\_ (CLIENT)

**Pure Exposure Value:** Most probable full jury value of alleged injury (accepting all that is alleged as true) without consideration of coverage, liability, comparative negligence, credibility of parties, contribution and/or other affirmative defenses/factors. This value is based on a reasonable jury's award.

**Probable exposure value** (based on information to date)? \$ \_\_\_\_\_ (OVERALL)  
\$ \_\_\_\_\_ (CLIENT)

**Probable Exposure Value:** Most probable jury outcome based on counsel's analysis based on counsel's experience, jury verdicts and considering potential liability, comparative negligence, credibility of parties, contribution and/or other affirmative defenses/factors. This value is based on a reasonable jury's award.

**What is the Settlement Value** (based on information to date)? \$ \_\_\_\_\_ (OVERALL)  
\$ \_\_\_\_\_ (CLIENT)

**Proposed CCP 998 (based on information to date)?** \$ \_\_\_\_\_ (OVERALL)  
\$ \_\_\_\_\_ (CLIENT)

**CCP 998 Value:** PLAN expects Approved Panel counsel to provide a realistic CCP 998 offer prior to incurring expert costs.

**VII. RECOMMENDED NEXT STEPS** (Counsel should provide a list of recommended Action Items and the rationale for each. These items will form the basis of the next status report with the Claim adjuster and/or Litigation Manager.)

In executing and returning this analysis, you are warranting that you have read and will comply with PLAN'S Litigation Management Policy – Policies and Procedures for the Handling of PLAN Matters and that there are no known legal or ethical conflicts in your representation of defendant in this case.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

**Attachment B**  
**LITIGATION BUDGET**

**PLAN**  
**DEFENSE COUNSEL LITIGATION BUDGET**

To:  
From/Responsible Attorney:  
Date:

LAWSUIT AND CLAIM INFORMATION	
Date Assigned:	
PLAN Claim No.:	
Excess Claim No(s).:	
Plaintiff(s) DOB/Age/MSA:	
Date of Loss:	
Date of Claim(s):	
Claim Demand:	
Date & Type of Response to Claim(s):	
Case Caption:	
Date of ICA and status reports	
Date of 1 <sup>st</sup> attempt to resolve the matter	
Date(s) of service of CCP 998s or Rule 68 offers	
Date(s) of MSC:	
Date(s) of Mediation:	
Initial and continued trial dates	
Assigned Judge:	

Members of the Firm you anticipate will be working on the case and their hourly rate:

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**INITIAL CASE ASSESSMENT**

Initial Case Review	__ hours x __/hr = \$
Meetings with relevant transit employees	__ hours x __/hr = \$
Responsive Pleadings	__ hours x __/hr = \$
Communications with TPA/adjuster/LM	__ hours x __/hr = \$
Communications with Plaintiff's counsel	__ hours x __/hr = \$
Initial Case Assessment	__ hours x __/hr = \$

**Total Estimate for Initial Case Assessment: \$ \_\_\_\_\_**

**NON-EXPERT DISCOVERY**

**Written Discovery**

Prepare Form Interrogatories	__ hours x __/hr = \$
Prepare Special Interrogatories	__ hours x __/hr = \$
Prepare Production Requests	__ hours x __/hr = \$
Respond to π's Form Interrogatories	__ hours x __/hr = \$
Respond to π's Special Interrogatories	__ hours x __/hr = \$
Respond to π's Production Requests	__ hours x __/hr = \$
Review, analyze and summarize π's responses	__ hours x __/hr = \$

**Depositions**

(Counsel should identify all anticipated deponents)

Prepare for deposition of π(s)	__ hours x __/hr = \$
Attend for deposition of π(s)	__ hours x __/hr = \$
Pre-deposition meetings with Transit witnesses	__ hours x __/hr = \$
Attend deposition of Transit witnesses	__ hours x __/hr = \$
Prepare deposition summaries	__ hours x __/hr = \$

**Record Review**

Review and summarize medical records	__ hours x __/hr = \$
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**Total Estimate for Non-Expert Discovery: \$ \_\_\_\_\_**

**ALTERNATIVE DISPUTE RESOLUTION**





**Attachment C**

**MEDIATOR PERFORMANCE EVALUATION**

## PLAN Mediator Evaluation

(To be completed by counsel and returned within 30 days of the completion of mediation)

To (the Responsible Attorney is expected to know who should be included in the communications):

From/Responsible Attorney:

Date of Assignment:

Date:

LAWSUIT AND CLAIM INFORMATION	
<b>Date Assigned:</b>	
<b>PLAN Claim No.:</b>	
<b>Excess Claim No(s).:</b>	
<b>Plaintiff(s) DOB/Age/MSA:</b>	
<b>Date of Loss:</b>	
<b>Date of Claim(s):</b>	
<b>Claim Demand:</b>	
<b>Date &amp; Type of Response to Claim(s):</b>	
<b>Case Caption:</b>	
<b>Date of ICA and status reports</b>	
<b>Date of 1<sup>st</sup> attempt to resolve the matter</b>	
<b>Date(s) of service of CCP 998s or Rule 68 offers</b>	
<b>Date(s) of MSC:</b>	
<b>Date(s) of Mediation &amp; Mediator:</b>	
<b>Initial and continued trial dates</b>	
<b>Assigned Judge:</b>	

Have you previously used this mediator? \_\_\_\_ Yes \_\_\_\_ No.

Result: \_\_\_\_ settled; \_\_\_\_ partially settled; \_\_\_\_ impasse; \_\_\_\_ open to further negotiations

Brief overview of negotiations. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

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Were you \_\_\_ satisfied \_\_\_ neutral \_\_\_ dissatisfied with the services rendered by the mediator in this matter? Please elaborate. \_\_\_\_\_

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Were you \_\_\_ satisfied \_\_\_ neutral \_\_\_ dissatisfied with the mediator's understanding of the facts of the case? Please elaborate. \_\_\_\_\_

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Were you \_\_\_ satisfied \_\_\_ neutral \_\_\_ dissatisfied with the mediator's understanding of the legal issues in this matter? Please elaborate. \_\_\_\_\_

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Were you \_\_\_ satisfied \_\_\_ neutral \_\_\_ dissatisfied with the mediator's ability to move the process along? Please elaborate. \_\_\_\_\_

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Were you \_\_\_ satisfied \_\_\_ neutral \_\_\_ dissatisfied with the mediator's facilities and amenities? Please elaborate. \_\_\_\_\_

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Did you have concerns about the mediator's impartiality? \_\_\_ Yes \_\_\_ No. Please elaborate. \_\_\_\_\_

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Would you use the mediator again? \_\_\_ Yes \_\_\_ No. Please elaborate. \_\_\_\_\_

**Attachment D**  
**APPROVED PANEL RATES**

## UTBMS Litigation Codes

### Litigation Code Set

L100	Case Assessment, Development and Administration	A100	Activities
L110	Fact Investigation/Development	A101	Plan and prepare for
L120	Analysis/Strategy	A102	Research
L130	Experts/Consultants	A103	Draft/revise
L140	Document/File Management	A104	Review/analyze
L150	Budgeting	A105	Communicate (in firm)
L160	Settlement/Non-Binding ADR	A106	Communicate (with client)
L190	Other Case Assessment, Development and Administration	A107	Communicate (other outside counsel)
L200	Pre-Trial Pleadings and Motions	A108	Communicate (other external)
L210	Pleadings	A109	Appear for/attend
L220	Preliminary Injunctions/Provisional Remedies	A110	Manage data/files
L230	Court Mandated Conferences	A111	Other
L240	Dispositive Motions	E100	Expenses
L250	Other Written Motions and Submissions	E101	Copying
L260	Class Action Certification and Notice	E102	Outside printing
L300	Discovery	E103	Word processing
L310	Written Discovery	E104	Facsimile
L320	Document Production	E105	Telephone
L330	Depositions	E106	Online research
L340	Expert Discovery	E107	Delivery services/messengers
L350	Discovery Motions	E108	Postage
L390	Other Discovery	E109	Local travel
L400	Trial Preparation and Trial	E110	Out-of-town travel
L410	Fact Witnesses	E111	Meals
L420	Expert Witnesses	E112	Court fees
L430	Written Motions and Submissions	E113	Subpoena fees
L440	Other Trial Preparation and Support	E114	Witness fees
L450	Trial and Hearing Attendance	E115	Deposition transcripts
L460	Post-Trial Motions and Submissions	E116	Trial transcripts
L470	Enforcement	E117	Trial exhibits
L500	Appeal	E118	Litigation support vendors
L510	Appellate Motions and Submissions	E119	Experts
L520	Appellate Briefs	E120	Private Investigators
L530	Oral Argument	E121	Arbitrators/mediators
		E122	Local counsel
		E123	Other professionals
		E124	Other

**Attachment E**

**APPROVED PANEL RATES**

Established this \_\_ the day of \_\_\_\_, 20 \_\_\_\_, effective \_\_\_\_, 20 \_\_\_\_, the hourly not-to-exceed rate for Approved Panel Counsel is \$\_\_\_\_\_, Approved Associate Attorney Support is \$\_\_\_\_\_ and Approved Paralegal Support is \$\_\_\_\_\_.

**Attachment F**  
**EXPERT RETENTION REQUEST FORM**

**EXPERT RETENTION REQUEST**  
**(NAME OF EXPERT)**

LAWSUIT AND CLAIM INFORMATION	
Date Assigned:	
PLAN Claim No.:	
Excess Claim No(s).:	
Plaintiff(s) DOB/Age/MSA:	
Date of Loss:	
Date of Claim(s):	
Claim Demand:	
Date & Type of Response to Claim(s):	
Case Caption:	
Date of ICA and status reports	
Date of 1 <sup>st</sup> attempt to resolve the matter	
Date(s) of service of CCP 998s or Rule 68 offers	
Date(s) of MSC:	
Date(s) of Mediation & Mediator:	
Initial and continued trial dates	
Assigned Judge:	

**Type of Expert:**

CV obtained/attached:  Yes  No

**Why is the expert needed?**

1. **Upcoming trial/mediation/MSA:**
2. **Investigation:**
3. **Damages:**

**Explain above:** (Counsel should provide a detailed explanation as to what we hope to gain from this expert, including a general appraisal of capability and experience).

**Phase I – Investigation/Oral Reporting**

**Tasks:**

(Counsel should identify the specific assigned tasks and anticipated time to perform the same (e.g., “review of medical records and oral opinion regarding the same ≈ 13 hours @ \$650/hour).

hours @ \$ = \$

**Estimated Amt: \$** \_\_\_\_\_ **Approved:** \_\_\_\_\_

**Phase II – Written Report**

**Tasks:**

hours @ \$ = \$

**Threshold granted: \$** \_\_\_\_\_ **Approved:** \_\_\_\_\_

**Phase III – Additional Work (if needed)**

**Tasks:** (Counsel should identify the specific assigned tasks and anticipated time to perform the same).

hours @ \$ = \$

**Estimated Amt: \$** \_\_\_\_\_ **Approved:** \_\_\_\_\_

**Phase IV – Depo Prep**

**Tasks:** (Counsel should identify the specific assigned tasks and anticipated time to perform the same).

hours @ \$ = \$

**Estimated Amt: \$** \_\_\_\_\_ **Approved:** \_\_\_\_\_

**Phase V – Trial Prep and Testimony**

**Tasks:**  
(Counsel should identify the subject matter(s) for which they anticipate the expert will provide testimony, along with an analysis regarding how the testimony impacts liability and any concerns regarding the admissibility of the expert at trial).

hours @ \$ = \$

**Estimated Amt: \$** \_\_\_\_\_ **Approved:** \_\_\_\_\_

**Attachment G**

**DEFENSE EXPERT EVALUATION FORM**

**PLAN**  
**DEFENSE EXPERT WITNESS – Evaluation (One per expert)**

(To be completed by counsel and returned within 30 days of the completion of the trial and/or case)

PLAN is extremely interested in assuring the quality of expert evaluation and testimony for its legal matters. Please complete this evaluation and return it to the Litigation Manager.

To:  
 From/Responsible Attorney:  
 Date of Assignment:  
 Date:

LAWSUIT AND CLAIM INFORMATION	
<b>PLAN Claim No.</b>	
<b>Excess Claim No(s).</b>	
<b>Case Caption</b>	
<b>Court/County</b>	
<b>Case No.</b>	
<b>Expert Witness:</b>	
<b>Type of Witness:</b>	
<b>Hourly Rate/Fees:</b>	
<b>Date of Testimony:</b>	

	YES	NO
Have you used the expert before?		
Was the expert qualified to testify in this matter? (If not, please provide details below and provide any relevant documents.)		
Was the witness dressed in a professional manner?		
Was the demeanor of witness professional and appropriate?		
Did the witness appear to be prepared and organized?		
Was testimony presented in an impartial manner?		
Was the scientific nature of the testimony presented in a manner that you, the evaluator, could understand?		
Was the scientific nature of the testimony presented in a manner that the jury could understand?		
Did the witness speak clearly and loudly enough to be heard by the jury and the other court officials?		
Did the witness speak to the jury at appropriate times?		
Were answers given by the witness responsive to the questions?		
Did the witness present clear and accurate testimony without volunteering unnecessary and unsolicited information?		
Did the witness remain calm throughout the testimony regardless of any adversarial		

approaches?		
Did Plaintiff's Counsel uncover any information that was used to discredit the expert? (If so, please provide details below and provide any relevant documents.)		
Were any inaccuracies in the expert's qualifications uncovered during litigation? (If so, please provide details below and provide any relevant documents.)		
Did Plaintiff's counsel demonstrate that the expert said something different in another lawsuit involving similar facts? (If so, please provide details below and provide any relevant documents.)		
Would you use the witness again?		

Please provide any additional relevant information, including but not limited to any post-trial juror feedback: \_\_\_\_\_

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**Attachment H**  
**PLAINTIFF'S EXPERT EVALUATION FORM**

**PLAN**  
**PLAINIFF EXPERT WITNESS – Evaluation (One per expert)**

(To be completed by counsel and returned within 30 days  
of the completion of the trial and/or case)

PLAN is extremely interested in assuring the quality of expert evaluation and testimony for its legal matters. Please complete this evaluation and return it to the Litigation Manager.

To:  
From/Responsible Attorney:  
Date of Assignment:  
Date:

LAWSUIT AND CLAIM INFORMATION	
<b>PLAN Claim No.</b>	
<b>Excess Claim No(s).</b>	
<b>Case Caption</b>	
<b>Court/County</b>	
<b>Case No.</b>	
<b>Expert Witness:</b>	
<b>Type of Witness:</b>	
<b>Hourly Rate/Fees:</b>	
<b>Date of Testimony:</b>	

	YES	NO
Have you had prior experience with the expert?		
Was the expert qualified to testify in this matter? (If not, please provide details below and provide any relevant documents.)		
Was the witness dressed in a professional manner?		
Was the demeanor of witness professional and appropriate?		
Did the witness appear to be prepared and organized?		
Was testimony presented in an impartial manner?		
Was the scientific nature of the testimony presented in a manner that you, the evaluator, could understand?		
Was the scientific nature of the testimony presented in a manner that the jury could understand?		
Did the witness speak clearly and loudly enough to be heard by the jury and the other court officials?		
Did the witness speak to the jury at appropriate times?		
Were answers given by the witness responsive to the questions?		
Did the witness present clear and accurate testimony without volunteering unnecessary and unsolicited information?		

Did the witness remain calm throughout the testimony regardless of any adversarial approaches?		
Did you uncover any information that was used to discredit plaintiff's expert? (If so, please provide details below and provide any relevant documents.)		
Were any inaccuracies in the expert's qualifications uncovered during litigation? (If so, please provide details below and provide any relevant documents.)		
Did you demonstrate that plaintiff's expert said something different in another lawsuit involving similar facts? (If so, please provide details below and provide any relevant documents.)		

Please provide any additional relevant information, including but not limited to any post-trial juror feedback: \_\_\_\_\_

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