

THE CUMBERLAND COUNTY INSURANCE COMMISSION

**Litigation Management Plan
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I. INTRODUCTION

The Cumberland County Insurance Commission (“CCIC”) was formed in order to secure certain insurance coverage and to provide control over risk management; an important element in this regard is relative to the proactive and effective management of litigation.

To achieve this fundamentally significant strategic goal, CCIC seeks to aggressively defend frivolous claims, promptly settle meritorious claims, and aggressively use all available defenses, including Title 59 immunities in a cost-effective manner.

CCIC approved Defense Attorneys are an important part of a team of professionals who have an impact on the CCIC's long term success. Actuaries, Auditors, Safety and Claims professionals, along with Risk Managers have worked together to properly fund the CCIC, to prevent and control claims and to practice sound risk management principles. The direct and active involvement of our members has and will contribute to CCIC’s success.

The purpose of the Litigation Management Plan is to outline the CCIC's philosophy of claims litigation, describe the roles and relationships of the parties to the litigation process and to supplement its Rules and Regulations and other policies established by the CCIC Commissioners.

The CCIC has previously established via Resolution 15-13 an advisory Claims Committee with a charter via Resolution 15-14. The Claims Committee shall be composed of at least one representative from each member of the CCIC and each representative shall have one vote. The Claims Committee shall review and recommend for approval or denial all payment authorization requests which exceed the total authority of a member’s deductible plus ten thousand (\$10,000) dollars for Property, including Boiler & Machinery, Auto Liability, General Liability including Law Enforcement Legal Liability claims, and fifteen thousand dollars (\$15,000), inclusive of legal fees, expenses and such other items for Workers’ Compensation claims; it being the intent of the CCIC that all members be aware of all claims and have opportunity for meaningful input from inception to ultimate resolution of all claims.

CCIC has established a protocol for litigation management which will serve the best interests of the members and CCIC. The plan will define the parameters within which CCIC's defense counsel and claim personnel will operate during the course of litigation. CCIC believes an active and well-understood relationship between its Claims Administrator, Defense Counsel, and Commission Attorney is essential

to the continued success of CCIC.

The best possible protection for members will be provided when the above parties combine their skills and effectively communicate from the inception of a complaint/petition to its ultimate disposition. It is imperative every expense associated with the defense or resolution of complaints/petitions be reasonably and necessarily incurred. CCIC simply cannot avoid the reality that it's "loss experience is composed of two factors it hopes to better control, those being loss and expense."

The CCIC must strive to eliminate the duplication of effort on the part of attorneys and claims specialists. The CCIC expects to identify and clarify pertinent issues at the earliest possible stage of litigation. Thereafter, it is necessary for this "team" to proceed immediately toward an expeditious, efficient, and just conclusion of a complaint/petition. Disposition at the earliest possible date is highly desirable and in most cases is in the best interest of members.

II. CONFLICT OF INTEREST

- A. No Defense Counsel or a member of his/her law firm shall be assigned the defense of a complaint/petition where the Defense Counsel or a member of his/her law firm serves as counsel to the member named in the complaint/petition unless the Commission attorney deems such representation appropriate.
- B. No Defense Counsel or a member of his/her law firm, appointed as Defense Counsel by CCIC shall represent an individual or entity in any matter, whether or not a formalized complaint or petition, against CCIC or any of its members, any other County Insurance Commission who is a member of the New Jersey Counties Excess Liability Fund unless the CCIC Attorney deems such representation appropriate.
- C. All Defense Counsel shall be required to comply with the Rules of Professional Conduct as promulgated and amended from time to time by the Supreme Court of New Jersey.
- D. CCIC shall terminate the appointment of Defense Counsel where the Defense Counsel or a member of his/her law firm has violated the above conflict of interest policy.

III. CLAIMS ADMINISTRATOR

CCIC's designated Claims Administrator is its Claims Manager and is charged with the responsibility to vigilantly and proactively anticipate and initiate all reasonable action needed to

control the claim and its cost for CCIC and its members. Thus, the Claim Administrator will always retain primary responsibility for the management of litigation from inception through final disposition. The Claims Administrator will work closely with CCIC's Attorney and the selected Defense Counsel.

The Claims Administrator will conduct as complete an investigation as is necessary to evaluate the member's exposure and thereafter promptly pursue resolution of the claim and/or complaint/petition. If the Claims Administrator is unable to develop all necessary evidence and information through their investigative efforts, the Commission Attorney will be asked to assist the Claims Administrator.

Upon receipt of Complaint, the Commission Attorney will forward copy to insurer and assign Defense Counsel from the County/CCIC's approved list to handle the member's defense. The assignment will be confirmed in writing by the Commission Attorney with copy to the Claims Administrator.

As to Tort Claims specifically, the Claims Administrator will be responsible for investigating any claims or allegations raised in the Tort Claim notice. Any proposed response to the Tort Claim Notice will be at the discretion and prepared by the Claims Administrator. The Claims Administrator will be responsible for submitting the final version of the response to the claimant and/or his or her attorney. The Claims Administrator will confer with the Commission Attorney on an as needed basis.

IV. DEFENSE COUNSEL

Assigned Defense Counsel owes the CCIC member a fiduciary responsibility, which includes but is not limited to the highest degree of care and good faith during his/her professional representation. CCIC's contractual duty to provide a defense to the member encompasses the expectation Defense Counsel will take whatever measures are necessary to avoid or limit liability and damages. In all matters Defense Counsel shall abide by New Jersey's Rules of Professional Conduct.

Once litigation begins, CCIC expects an aggressive approach to the case. Contact with the member and Plaintiff/Petitioner's Attorney should be made immediately. Indeed, Defense Counsel is urged to seek voluntary cooperation from the member and Plaintiff/Petitioner's Attorney so that essential facts and discovery can be exchanged informally and promptly. Interrogatories, document requests and other written discovery

should routinely be filed. Important evidence should be obtained promptly through the most efficient and cost effective means available. Generally, an aggressive gathering of information by Defense Counsel working with the Claims Administrator and the member will aid the prompt and efficient disposition process. Moreover, copies of all pertinent motions, pleadings, and other court filings which are served by the parties should be forwarded to the Claims Administrator in a timely manner.

It is essential the effort of Defense Counsel be in proportion to the seriousness of the matter in question and that Defense Counsel should confer with the Claims Administrator to determine how to bring each case/claim to a speedy and cost-effective conclusion. Neither the member nor CCIC are well served by exorbitant costs incurred in an easily-defensible matter. By way of example, generally speaking, defense expenditures should not exceed costs of any settlement of the action.

Defense Counsel should forward a proposed litigation budget to the Claims Administrator. Once the budget has been submitted, Defense Counsel will be expected to update for good reason. In such cases, Defense Counsel will be expected to submit a revised proposed budget to the Claims Administrator along with an explanation as to why additional attorney's fees/costs are required.

CCIC directs an attorney with commensurate Title 59/Workers' Compensation experience will handle assigned matters.

In the event the Title 59/Workers' Compensation defense strategy is in question, it is incumbent upon Defense Counsel to discuss said strategy with the Claims Administrator, CCIC Attorney and/or Special Counsel if appropriate.

As soon as the issues are formed, Defense Counsel should seek to move the case forward. Delays in terminating litigation will generally not be in the best economic interest of CCIC and should, therefore, be avoided. However, CCIC understands that there may be delays that may result which are not within the control of defense counsel, such as those that may be attributable to Plaintiff or Petitioner. In such cases, it is incumbent upon Defense Counsel to communicate said rationale with the Claims Administrator.

V. CCIC ATTORNEY

CCIC's Attorney is responsible for the overall legal conduct of CCIC as it relates to *N.J.S.A.40A:10-1 et. seq.*, Insurance, *N.J.S.A. 40A:11-1 et. seq.* Local Public Contracts Law,

and in general all those bodies of law which affect the CCIC. In addition, the Attorney shall assign and evaluate Defense Counsel.

The CCIC Attorney shall consult with the Claims Administrator on all complex conflict of interest questions. The CCIC Attorney is responsible for assisting the Claims Administrator in monitoring the cost and performance of Defense Counsel, assisting in the coordination of claims in litigation, participating in the planning of pre-trial and trial strategy and be provided settlement and release documents for review on behalf of the Commission. The CCIC Attorney shall attempt to resolve all disputes between the Claims Administrator and Defense Counsel so as to assure the orderly implementation of the policy and guidelines outlined herein. It is anticipated that appointed counsel will keep the Claims Administrator and Commission counsel updated as to all developments as appropriate in all attorney client relationships.

The use of paralegals is encouraged in order to control costs. Whenever there are services that can be performed by a paralegal, then the Commission encourages the use of those services.

VI. SPECIAL COUNSEL

CCIC may elect to appoint an attorney(s) as Special Counsel or may designate the CCIC Attorney as such. Special Counsel is appointed to provide early, proactive and deliberate defense strategy to the Claims Administrator, Defense Counsel, CCIC Attorney and CCIC when in the opinion of CCIC said person(s) possess unique and extensive, specialized experience in a matter relevant to the defense of the complaint/petition.

VII. INTERACTION/PROMPT DISPOSITION

The efficient resolution of claims will depend upon the extent of cooperation and assistance the "Defense Team" extends to each other. Although we expect each professional to be responsible for his/her assigned tasks, these duties cannot be accomplished in a vacuum. The key to success is ongoing and frequent communications between all involved parties.

The Defense Attorney and Claims Administrator share the common goal of prompt disposition of all complaints/petitions. An exchange of views is encouraged in order to identify pertinent issues and outline the most effective course available to resolve the complaints/petitions in the best interest of CCIC and its members. Even though independent

judgment must be exercised by Defense Counsel and Claims Administrator, the obligation to ensure the maintenance of open lines of communication is held equally by Defense Counsel and the Claims Administrator. Each party must be available to receive and exchange views whenever necessary.

Initially, the Claims Administrator and member should gather all investigative evidence and information either prior to or simultaneously with the defense assignment to avoid duplication of effort. Defense Counsel should thereafter promptly advise the Claims Administrator of such matters as the status of the case, any and all areas of legal exposure, the potential for recovery of sanctions for frivolous claims, the possibility of resolving the case on summary judgment, and the anticipated probability of success should the matter ultimately proceed to trial.

VIII. FEES AND EXPENSES

Defense Counsel fees and related charges are the most significant portion of expense in the litigation cycle. Since legal fees are included in a member's "experience", it is essential that all expenses incurred in the defense or resolution of litigation be reasonable and necessary. Defense Counsel may find it necessary to research certain issues of law during the course of a complaint/petition. CCIC expects that Defense Counsel is familiar with most negligence, Title 59, and Workers' Compensation issues and, therefore, research would usually be limited to confirming the law, or exploring unusual nuances on questions of law. Since the cost of research is included in overall expenses, CCIC should receive the conclusions, results and any memoranda produced as a result of this work.

Statements for legal services must comply with CCIC's approved fee schedule which is included in each Defense Counsel's professional services contract. Statements for services must be itemized with expenditures in one-tenth of an hour increments. Routine ministerial tasks such as receipt and review of letters should in most every instance not exceed 1/10th of an hour for review. The Commission also will not accept billing for two lawyers to confer on an assigned matter as an "interoffice" conference. The Commission believes that such activities are appropriate but generally benefit the development and growth of counsel's expertise and accordingly shall not be billed to the Commission. The date, description of the services rendered, and identity of the persons providing such service must be provided for each entry. Appropriate documentation must be provided for out-of-pocket costs and disbursements. If

mileage is billed it will be paid at a rate of .40 per mile; however, if attorney travel time is billed, mileage reimbursement will not apply. Each interim and final statement will reflect current outstanding fees plus cumulative paid fees and expenses from the inception of the legal activities of the file.

Bills for legal services should be generally submitted monthly; provided, however, that no bills for \$100 or less should be submitted monthly. If a file is inactive or bills to date are less than \$100 bills should be submitted on a quarterly basis but not more frequently than that.

County Counsel/Counsel to the Cumberland County Insurance Commission and the Claims Administrator will review all statements for services rendered and make inquiries to Defense Counsel on any items needing clarification.

IX. REVIEW OF LEGAL SERVICES

Occasionally, CCIC may audit and review the legal product of retained Defense Counsel. It is expected that Defense Counsel will cooperate with CCIC and make available all files requested for review.

The review will address the overall quality of the work performed including but not limited to the following:

1. Services performed by retained Defense Counsel:

- a. Did Counsel promptly contact the CCIC member and Claims Administrator?
- b. Did Counsel follow the initial instructions and guidelines set forth by the Claims Administrator and/or CCIC Attorney?
- c. Did Counsel file responsive pleadings in a timely manner?
- d. Did Counsel timely report to the Claims Administrator?
- e. Did Counsel properly perform research?
- f. Did Counsel promptly perform and report all reasonable and necessary discovery?
- g. Did Counsel effectively communicate with all necessary parties at all stages of the litigation?
- h. Did Counsel aggressively move the case to a conclusion and was there a constant attempt to seek early disposition?
- i. Did Counsel submit required on a complete and timely basis?
- j. Did Counsel anticipate prospective areas of concern?

- k. Did Counsel identify and communicate any areas that would lead to legal exposures?

2. The fees for legal services rendered compared with the work performed:

- a. Generally speaking, were the billings reasonable?
- b. Were the billings within the approved fee schedule?
- c. Were the billings itemized to one-tenth of an hour?
- d. Were the billings submitted at appropriate intervals?
- e. Were the billings reflective of the work performed?
- f. Were the services performed or the fees charged commensurate with the complexity of the case assigned?

X. SUBROGATION

The Claims Administrator, in consultation with the CCIC attorney, will determine whether or not a claim is appropriate for the CCIC to pursue reimbursement for any monies paid by the CCIC to recoup expenses on a loss that has been paid when another party or entity should be liable for paying at least a portion of said claim.

Should it be determined that any particular loss is appropriate for subrogation, the following procedure must be utilized:

The Claims Administrator will communicate with the responsible party seeking reimbursement.

If, however, the Claims Administrator is unable to obtain reimbursement from and/or cooperation of the responsible party, the Claims Administrator shall refer the subrogation to the Commission attorney.

If the CCIC attorney is unable to obtain reimbursement from and/or cooperation of the responsible party, the CCIC attorney, where appropriate, will pursue all legal remedies on behalf of the CCIC, including but not limited to filing a lawsuit. The Commission attorney has the authority to assign this duty to outside counsel.

This Litigation Management Plan is supplemented by insurer's policies and procedures where implicated as they may be updated.