



Litigation Management  
Guidelines for Defence Counsel



Zurich maintains a solid commitment to provide professional, expert and responsive legal services to our customers. Establishing and maintaining collaborative relationships with defence counsel is an integral element of our claim service offering. We believe that a strong relationship with our insureds and defence counsel will lead to a successful conclusion of each litigated matter.

In order to strengthen our collaborative relationship with defence counsel and provide ever-increasing levels of service for our insureds, we have produced guidelines that we believe represent a reasonable and effective path for the management of litigated matters.

These guidelines serve our defence counsel by ensuring consistency in claim litigation management expectations. They assist our claims professionals by ensuring that defence counsel possess an awareness of, and dedication to, our litigation management initiatives, as well as the tools to meet our mutual expectations. Ultimately, the guidelines strengthen the strategic collaboration between defence counsel and our claims professionals, which translates into a higher level of service for our customers.

We have also included an addendum that specifies our business policies on the reimbursement of expenses, payment of professional fees and other administrative matters. Please familiarise yourself with the guidelines and the addendum.

We look forward to collaborating with your firm to serve the legal needs of our policyholders. Please feel free to contact one of our claims professionals with any questions you may have.

## I. Philosophy

Zurich expects to work with defence counsel and its insureds to achieve the best result for the insured in an efficient and cost-conscious manner consistent with the law firm's ethical obligations. Nothing contained herein is intended to nor shall restrict counsel's exercise of independent professional judgment in rendering legal services for the insured or otherwise interfere with any ethical directive governing the conduct of counsel.

## II. Case Development

An effective and strategically sound legal defence is the responsibility of counsel and Zurich and should be developed in a timely manner.

- A. A goal is to identify, timely, those claims for which there is liability, and to discuss settlement opportunities early. The activities necessary to defend a given claim and bring it to appropriate resolution should be addressed early and the steps necessary to achieve that resolution should be jointly agreed upon between Zurich and defence counsel.
- B. An early resolution of any litigation is desirable and the use of alternative dispute resolution is encouraged.
- C. If defence counsel is involved in settlement negotiations, settlement authority must be obtained from Zurich and requests for authority should be made in a timely manner.

## III. Staffing Philosophy

Your law firm should designate one lawyer to have primary responsibility for each case on which your services are requested. The case should be staffed economically and effectively. Obviously, a balance must be struck between the efficiency a more experienced lawyer at your firm brings to a given task and the advantages of having the task performed by a junior lawyer. Duplication of effort within the firm should be avoided. To achieve the best efficiency and value, the roles and responsibilities of staff members should be clearly defined and appropriate to each individual's qualifications, level of experience and billing rate. Defence counsel should delegate work wherever possible to achieve efficiency and cost-effectiveness without compromising quality.

## IV. Reporting Requirements

**A. Reports** – Unless otherwise requested, reporting is required for three events: acknowledgment, initial evaluation and significant developments. Reports should be provided to both Zurich and the insured.

- 1. Acknowledgement** – Upon receipt of a new case, counsel should send an acknowledgment letter regarding receipt of the file and designating the legal team assigned to the case. Any matters of immediate concern or information that may result in early resolution of the case should be addressed in the acknowledgment letter.
- 2. Initial Report** – No later than 28 days from receipt of the assignment, counsel should send an initial report with the following information:
  - (a) A summary of the allegations in the complaint, the factual basis for the litigation, a summary of the information developed during the preliminary investigation and a preliminary evaluation of liability and damages.
  - (b) A litigation plan providing the following:
    - i. Identify each significant activity counsel proposes to initiate (e.g., investigation, motion, discovery, legal research, etc.).
    - ii. Identify discovery and motions that have been or are likely to be initiated by other parties.
    - iii. Estimate the completion date for each activity.
    - iv. Provide a preliminary defence budget estimating the expense of each identified activity.
  - (c) Discussion of the potential for early disposition of the case by settlement, and recommendations with respect to arbitration, mediation or direct settlement negotiations.
  - (d) Discussion of the potential success of any application to dismiss the litigation.
  - (e) An estimate of the probable trial date.
- 3. Significant Development Report** – Defence counsel should communicate and apprise of significant developments as soon as practical. This will include, if applicable, reports on:
  - (a) Settlement options and/or opportunities to challenge or dismiss proceedings.

- (b) Updated evaluation of the client's liability and damages.
- (c) An updated litigation plan (including an updated defence budget).
- (d) Settlement Report – If it is anticipated the case will proceed to mediation or arbitration, on a date mutually agreed upon by counsel and the claims professional, but no later than 45 days prior to the scheduled mediation/arbitration date, a detailed settlement report should be submitted. The report should detail the litigation and analyse the merits of the defence. It should also include a recommendation for the mediation or arbitration.
- (e) Hearing Report - If it is anticipated the case will proceed to hearing, on a date mutually agreed upon by counsel and the claims professional, but no later than 45 days prior to the scheduled hearing date, a detailed report should be submitted, detailing the issues and an analysis of same and any other information requested by Zurich.

**B. Documentation** – Reporting shall not include copies of the following documents unless specifically requested:

1. research memorandum, motion papers and legal briefs;
2. witness statements;
3. expert reports;
4. medical reports.

Counsel should provide copies of all pleadings and amended pleadings filed by or against the party whom you are defending and releases and orders of dismissal. Unless otherwise advised by Zurich or if impractical, counsel should consult with Zurich by e-mail only.

Counsel should comply with all reasonable requests for information and documents; however, any document or information that is privileged should not be disclosed, absent consent from the insured.

**C. Consultation** – After submission of the initial report, counsel should be prepared for discussion with and input and comment from Zurich. Counsel and Zurich will endeavour to agree on the proposed activities outlined in the litigation plan. However, in the event of disagreement, the final decision will remain the independent professional judgment of defence counsel.

## V. Billing

### A. Billing Procedure

**1. Frequency of Billing** – Bills should be submitted quarterly, unless the total amount of unbilled legal fees and expenses is less than \$1,000.00, in which case you should wait until this threshold is met before submitting an invoice.

### 2. Billing Format –

- i. **Heading** – The first page of the bill must state: (a) the caption of the case; (b) the name of the insured; and (c) Zurich's claim number.
- ii. **Body** – The bill must be prepared with entries showing: (a) the date the work was performed; (b) the initials of the person providing the service; (c) a description of the work performed (single activities); and (d) the actual time in tenths of an hour.
- iii. **End of Bill Summary** – The bill must include: (a) the full name of each solicitor; (b) the level of each timekeeper (i.e., partner, associate, solicitor etc.); (c) the hourly rate of each timekeeper; and (d) the total hours and total amount charged for each timekeeper during the billing period.

## B. Charges for Service

1. **Time Charges** – All charges for services must be recorded daily based upon their actual time in one-tenth hour increments.
2. **Single Entry Timekeeping** – The time for each activity should be separately stated. Grouping multiple activities under a single time charge is not acceptable absent authorisation from Zurich.
3. **Information Descriptions of Services** – Descriptions of services should inform of the nature, purpose or subject of the work performed and the specific activity or project to which it relates.
4. **Compensation** – Counsel should consult with Zurich regarding any increase in the rate of compensation. Zurich will not reimburse any increase to a charge rate which it has not agreed.
5. **In-Firm Conferences** – Where a lawyer consults with another lawyer in the firm to obtain specific advice or to discuss a substantive or procedural aspect of the case that result in a more effective defence, said reasonable and necessary conference time will be reimbursed, provided that sufficient detail of the subject of the communication is set forth to demonstrate its relevance and value.
6. **Multiple Attendance** – Counsel should consult with Zurich where it is anticipated that more than one lawyers attendance is necessary at hearing, court appearances, meetings, witness interviews, inspections etc.
7. **Legal Research** – Counsel should consult with Zurich before undertaking a legal research project requiring over three hours of research. Copies of all research memoranda shall be provided to Zurich upon request.
8. **Motions** – Counsel should consult with Zurich before filing any motions not previously

identified and approved in the initial litigation plan or supplement thereto.

9. **Revising Standardised Forms / Pleadings** – Only the actual time spent in personalising standardised pleadings, documents, discovery responses or requests to the case at hand should be billed, rather than the time originally spent drafting standard language.

## C. Disbursement

1. **Internal Expenses** – Zurich shall advise counsel of its guidelines as to reimbursements of internal expenses - See attached addendum.
2. **External Expenses** – Charges for service by outside vendors will be reimbursed at their actual cost. Expenses of over \$500 may be forwarded direct to Zurich for payment. Otherwise, disbursements should be itemised on the law firm's invoice with the following information: (a) the name of the vendor; (b) the date incurred; and (c) a specific description of the expense. The disbursement invoice should be attached to the law firm's invoice.
3. **Travel Expenses** – Counsel should consult with Zurich prior to incurring travel expenses. All expenditures of \$25 or more must be supported with receipts attached to the law firm's invoice.
4. **Professional Services** – Counsel should consult with Zurich prior to incurring expenses for experts, consultants, investigators or other professional services.
5. **Secretarial and clerical activities** – Secretarial and clerical work is not billable to Zurich. As examples and not as a complete list, secretarial and clerical work includes receipt and distribution of mail, new file set-up, maintenance of office and lawyers calendars, transcribing, copying, posting, faxing, e-mailing, inserting documents into and retrieving documents from the file, maintaining order in the file, stamping documents, tabbing sub files and assembling materials.

## VI. Bill and File Review

Zurich reserves the right to review all charges for services and disbursements pertaining to litigation, including without limitation all charges paid by Zurich with respect to such litigation. Zurich reserves the right to conduct on-site audits and to review the defence file and/or defence bills in a manner that will not compromise the solicitor-client protection afforded to material in the file.

Zurich fully reserves all rights to decline to pay or to seek reductions and/or refunds with respect to charges that fail to comply with the requirements set forth herein, and which are not fully explained or documented by the firm after reasonable inquiry. Zurich shall allow the law firm to appeal any declination of payment by Zurich. Zurich agrees to pay the undisputed portion of bills received from counsel.

## Professional services, fee and expense addendum

*This addendum is intended to clarify Zurich's expectations relating to the services provided as well as the fees and expenses which are associated with your work providing those services. Nothing in this addendum is intended to, nor shall, restrict counsel's exercise of independent professional judgment in rendering legal services for the insured or otherwise interfere with any ethical directive governing the conduct of counsel.*

### I. Philosophy

As legal counsel trusted to handle matters on behalf of our insured's we feel it important to understand Zurich's philosophy for handling matters in litigation. Simply, we seek a successful resolution of all litigated matters.

Our goals are cost containment and dispute resolution. We seek to achieve consistent and efficient processes yet also to manage, not merely process, our cases. We expect the delivery of prompt and appropriate response to all cases, identifying issues early and responding to them and moving the matter to resolution without wasting our or our insured's time or money.

Where there is no defence to a claim or where there is a significant risk of an adverse finding against an insured, all efforts should be made to effect settlement as early as possible. Our cases should remain in litigation only as long as is necessary to achieve successful outcomes. We expect that counsel will work together with their claims counterpart to define what a successful resolution is for each specific matter and work efficiently and promptly to reach that resolution.

### II. Staffing

Your firm must designate one person who is responsible for the handling of any matter assigned. Zurich expects that a discrete number of solicitors will work on Zurich matters. It is expected that this discrete group be used consistently in order to ensure that the firm can understand Zurich's philosophy and accurately follow the guidelines and this addendum.

Zurich expects that the economical staffing of each case will follow a model of one partner, one senior associate and one solicitor. If a specific matter calls for resource needs outside of this model, any deviation should be pre-approved by the claims professional. No duplicative work is to be performed on any assignment.

## III. Specified Additional Litigation Management Guidelines

Depending on how you have been retained and the nature of the work that you will be performing on behalf of Zurich and its insureds, you may have additional litigation management requirements. Those requirements will be made known to you via the assignment letter you receive. Nothing in those guidelines should be construed as inconsistent with the attached guidelines and this addendum (collectively referred to as the 'Guidelines').

### IV. Professional fees

- A. Hourly rates** – The hourly rates for legal services offered by counsel must be agreed to in advance and confirmed in writing by the claims professional.
- B. Rate increases** – Counsel must submit requests for hourly rate increases in writing to the claim professional at least 90 days prior to the proposed effective date of the increase. Hourly rate increases will be honoured only if approved in writing.

### V. Billing Considerations

- A. Electronic Billing** – It is expected that all counsel will bill for all services rendered via electronic submission.
- B. Bill Review** – Each invoice which is submitted by your firm will be audited for compliance with the Guidelines. Lack of compliance will lead to reductions to the invoice as submitted. Each reduction will be explained and your firm will be given the opportunity to appeal those reductions. Your knowledge and compliance with our Guidelines will substantially reduce any reductions and the associated expenditure of time by both our bill review unit and your firm's personnel.
- C. Specific Billing Expectations**
  - 1. Block Billings/Vague Activity Entries** –
    - (a) The bill must be prepared with entries showing:
      - i. the date the work was performed;
      - ii. the initials of the person providing the service;
      - iii. a description of the work performed (single activities); and
      - iv. the actual time in tenths of an hour.
    - (b) Descriptions must be sufficiently clear to allow a lawyer not familiar with the file to review a bill and determine what was done and how such activity reasonably and efficiently moved the file toward a negotiated or litigated closure and

whether the time billed for that activity appears reasonable.

- (c) The above applies to all billing entries relating to a file including travel time.

2. **Split File Billing** – In matters where the firm is required by Zurich to split their billing between more than one file, the firm shall bill the specific amount billed to each file with an explanation which includes the total amount billed, which files benefited and how the billing was dispersed. Where entries are not clear or appear inconsistent, additional description and/or documentation will be requested from the firm.
3. **Routine Correspondence/E-mail** – All correspondence/e-mail billing should identify the recipient or sender and the subject matter of the correspondence/e-mail. The description should be specific. If the description is inadequate, a copy of the correspondence/e-mail will be requested.
4. **Telephone Calls** – All telephone billing should identify the caller or recipient and the subject matter of the conversation. If the description is inadequate, a request will be made for file notes that outline the discussion and information obtained relative to the time billed.
5. **Research** – The description of any research must clearly state the nature of the research and need for same. If there is an inadequate billing description, the research materials will be requested to assure the subject required the level of time billed.
6. **Previously prepared legal research, pleadings and discovery** – Zurich will not pay for research or any other work that counsel initially prepared for other files. Only the initial matter for which such research/work was actually performed may be charged. Any charges for the subsequent use of the research is limited to the time spent adapting the research to the current case.
7. **Multiple attendances** – Zurich expects that there will only be one attendee at hearing, court appearances, meetings, witness interviews, inspections and other similar events. Zurich should be consulted in advance of any additional attendee based upon demonstrated need. Zurich's approval should be noted in the invoice description of an entry billing for the additional attendee's time.

8. **Review of documents** – Any billing entries for document review should describe:
  - (a) the type of documents reviewed;
  - (b) the volume of documents reviewed; and
  - (c) the specific purpose for the review.

## VI. Expenses

### A. Zurich will reimburse the following expense charges:

1. Internal –
  - a. Photocopying up to 50 cents per page – The per-page photocopy rate, the date copies were made and the number of copies made should be noted on the bill.
  - b. Actual long distance telephone charges – Bills should indicate that telephone charges are long distance (v. local) to qualify for payment.
  - c. Actual long distance telephone charges associated with outgoing facsimiles. Zurich will not reimburse any per-page charges for outgoing or incoming facsimiles.
2. External –
  - a. Reasonable travel expenses, including airline transportation (not to exceed economy fares), actual meal allowance not to exceed \$80 per day.
  - b. Air freight/courier expenses only if incurred due to circumstances outside the law firm's control or with the prior approval of Zurich.
  - c. Court filing fees.
  - d. Expert and investigator expenses – Counsel should discuss with the assigned claim professional all anticipated expenses to be incurred by experts. Requests for the use of an expert should be accompanied by a proposal setting forth the following information:
    - i. The purpose for the expert's involvement;
    - ii. The nature of any examinations, tests, studies or other activities the expert will undertake;
    - iii. A detailed budget for the proposed service;
    - iv. The corresponding rates and payment terms the expert expects; and
    - v. The expert's current curriculum vitae.



## VII. Administrative expenses and overhead

Zurich has established a policy in compliance with legal and ethical standards relative to reasonable and appropriate legal expenses. Zurich does not consider the following expenses reasonable or appropriate and will not reimburse counsel for them. The following sections are intended to be illustrative and not comprehensive.

### 1. Administrative –

- (a) Preparation of invoices or responses to billing inquiries.
- (b) Time spent reviewing or analysing the law firm's conflict issues, opening or closing the file or other administrative activities.
- (c) Clerical work performed by a solicitor.
- (d) Fees and expenses for secretarial, word processing, proofreading, copying, faxing, scheduling, making travel arrangements, charges to open or close a file and organisation and management of clerical work.

### 2. Overhead –

- (a) Case management or litigation software or systems.
- (b) Continuing education for any personnel.
- (c) Office overhead, including: rent, conference rooms, equipment rental, utilities, computer equipment, software, books, publications, seminars, office supplies, routine postage, refreshments during meetings, local telephone charges, fax usage charges, employee courier/messenger services and local or overtime meals.
- (d) Overtime charges.
- (e) Mobile phone charges.
- (f) Computerised legal research charges