

VERUS UNDERWRITING MANAGERS

Defense Counsel Billing and Litigation Guidelines

I. General Purpose of the Guidelines

Verus Underwriting Managers (hereinafter “Verus” or the “Company”), has retained your firm due to your legal expertise, judgment and professional integrity. These guidelines detail Verus expectations of you and are designed to allow us to communicate effectively regarding the matters assigned to you. It is our expectation that you will work with our Insureds and Claims Professionals to achieve the best possible outcomes in an efficient and cost effective manner consistent with your ethical obligations. Nothing contained herein is intended to, nor shall, restrict your exercise of professional judgment in rendering legal services for Verus Insureds or otherwise interfere with any ethical directive governing the conduct of counsel. If at any time you feel that a provision of the guidelines raises a potential conflict with your fiduciary or ethical responsibilities, please bring it to our immediate attention.

These guidelines are part of the terms and conditions under which you agree to provide legal services to Verus Insureds. The guidelines should be read and agreed to by the responsible attorney and read by all law firm personnel who will work on matters assign to you by Verus Claims Professionals. By accepting a matter from us, you agree to comply with the terms and conditions set forth in these guidelines. We reserve the right, in our sole discretion, to modify or supplement these guidelines from time to time, upon reasonable notice to you.

II. General Guidelines

A. Confidentiality

During the course of your retention by us, you may handle information or documents that are confidential, proprietary, or constitute trade secrets. The information or documents may relate to a specific Verus Insured, our company in general, or our company’s internal strategy on claims, underwriting, legal and/or other business issues. All such information or documents must be held as confidential and privileged even after the representation is concluded.

B. Conflicts of Interest

When Verus assigns a new matter to you, we ask that you immediately perform a thorough conflicts check without charge to us. Defense Counsel must affirmatively

confirm that no conflicts exist and that the firm is able to handle the matter. Defense Counsel is also expected to continually review conflicts throughout the representation. Any conflict identified is to be reported immediately telephonically *and* electronically (via email) to the Verus Claims Professional.

C. Media Contact

Extrajudicial statements by Defense Counsel to the media are governed by relevant state or federal rules of professional conduct. Communications that are clearly prohibited by such rules of professional conduct should not be made under any circumstance.

In circumstances where an extrajudicial statement to the media is *permitted* and may be deemed to be in the best interests of the represented Verus Insured, Defense Counsel should: (1) immediately report and discuss all media inquiries with the Insured and the appropriate Verus Claims Professional; and, (2) present any proposed responses, in writing, to the Insured and Verus Claims Professional in advance of responding.

D. Coverage Limits

Defense counsel is expected to carry a minimum \$5,000,000 in Professional E&O coverage limits.

III. Case/Litigation Management Guidelines

Unless otherwise stated in any *Unit Specific Additional Guidelines* that may be attached hereto, the following Case/Litigation Management Guidelines shall apply to all matters assigned to Defense Counsel by any Verus Operating Unit.

A. Early Resolution

With any matter in litigation, a primary goal should be to timely identify those cases for which liability is clear and to determine the best approach to early resolution. Cases should only remain in litigation for as long as it is necessary to achieve a successful outcome.

B. Staffing Philosophy

Your firm should designate one attorney to have primary responsibility for each case for which you are retained. The case should be staffed economically and effectively. Duplication of efforts should be avoided. The goal should be to strike the right balance between the more experienced attorney and the junior attorney or paralegal. Non-complex tasks should be delegated to the less experienced personnel whenever

possible in order to achieve efficiency and cost-effectiveness without compromising quality of representation.

C. Case Acknowledgment

Defense Counsel is required to provide written acknowledgement of receipt of any new assignment within **48 hours**. Acknowledgement should be provided via email, phone or facsimile. This acknowledgment should identify the lead attorney as well as the names and roles of all other attorneys and paralegals who are expected to work on the matter. At our discretion, we may request a specific professional to work on our matter.

Within **10 business days**, an initial phone conversation should take place between Defense Counsel and the Verus Claims Professional during which initial case impressions and strategy is discussed.

D. Reporting

Unless otherwise specifically requested, formal reporting should be limited to the following events: (1) Initial Report/Plan for Resolution; (2) Significant Developments; (3) Pre-Mediation/Arbitration/Settlement Conference; and, (4) Pre/Post-Trial.

All reports should present *new* information in a concise and meaningful manner. Reports should not reiterate large amounts of information that has already been presented in prior reports.

Defense Counsel should keep the Insured and Verus Claims Professional apprised of routine case progression and/or developments on a continuing basis via brief, informal status updates sent via email.

(1) Initial Report/Litigation Plan and Budget

Within **45 business days** of receiving a new assignment, Defense Counsel shall submit an Initial Report along with a Litigation Plan.

Defense Counsel is expected to meet with the Insured (defendant) as soon as possible, but no later than 60 days after receiving the lawsuit. Depending on the facts, it is preferred that the Defense Counsel meet with the Insured in person at the loss location or Insured premises. As a last resort a telephone discussion is acceptable. In

cases of high damages it is encouraged that a face to face meeting take place between the Claim Professional and Defense Counsel so that both parties are on the same page as to how to proceed with the claim to achieve the best outcome. All correspondence should be sent to the Claim Professional electronically.

The Initial Report/Litigation Plan should include the following:

- A basic summary of the underlying facts and allegations.
- A discussion of Defense Counsel's overall impressions and evaluation of liability and damages. This should include, but not be limited to, a discussion of following: any potentially applicable damage caps, whether attorney's fees are recoverable, whether the Insured is financially stable, and an opinion of as to the possibility of indemnification, contribution, subrogation or salvage, including the amount involved and steps which will be taken by you or the Company to preserve these remedies.
- A discussion of any key legal issues and available defenses.
- A Litigation Plan that provides a clear *strategy for case resolution*. The Litigation Plan should include, but not be limited to: (a) identification of all significant activity expected to be initiated by Defense Counsel (i.e. investigation, legal research, discovery, motions etc...); (b) identification of any discovery or motions that, have been or likely will be, initiated by other parties; (c) a list of all significant dates and/or deadlines associated with the litigation (i.e. discovery/motion deadlines, settlement conferences, trial date etc...).

The Litigation Budget should provide the estimated expenses associated with all activities listed in the Litigation Plan. The initial Budget should be completed after the defense counsel has filed an answer, met or discussed the case with the insured and interrogatories have been received. At this time the defense counsel should be in a position to provide defense cost necessary to complete discovery up to trial. It may be necessary for defense counsel to provide an updated budget if discovery identifies unexpected cost. During the claim handling the claim handler should be reviewing the budget to make sure cost incurred are in line with what was shown in the budget. If the case is expected to go through trial an updated budget should be provided to include those cost.

(2) Significant Development Reports

Defense Counsel shall provide a written report or place a call to the claim handler within **10 business days** of each "significant development(s)". "Significant developments" shall include, but not be limited to, hearings on dispositive or evidentiary motions, significant party and/or expert depositions, settlement demands, demands for mediation/arbitration, scheduling of trial date, court conference or mediation/settlement conference, changes in liability/damages assessment etc.

(3) Pre-Settlement Conference and/or Mediation/Arbitration Reports

Defense Counsel shall provide a comprehensive report a *minimum of 45 days prior* to any voluntary or court-ordered settlement conference, mediation or arbitration.

(4) Trial Reports

Defense Counsel shall provide a comprehensive report approximately *30 days prior* to the scheduled trial date.

If a matter is taken to trial, the trial attorney is required to report to the Verus Claims Professional, verbally or otherwise, *at least once each day* of the trial.

At the conclusion of trial, Defense Counsel must provide the Verus Claims Professional with a written comprehensive post-trial report *within 48 hours*. A copy of the Judgment and Verdict form shall accompany the report. The report should include a discussion of the result as well as any recommendations for future handling, if appropriate.

E. Claim File Documentation

Copies of the following should routinely be provided to the Verus Claims Professional: (1) Pleadings/Amended Pleadings; (2) Substantive Motions; (3) Orders on substantive or dispositive motions; (4) Expert Reports; (5) Brief summary of any deposition/testimony given by key parties/witness/experts; (6) Releases, Settlement Agreements, Dismissals and/or Final Judgments/Verdicts.

F. Depositions-Motions-Appeals

Depositions/Motions and Appeals must be jointly agreed to as part of the Plan for Litigation and Budget. Defense Counsel should consult with the designated Claim Professional before conducting or attending any deposition not contemplated in the Plan for Litigation and Budget. It is preferred that the plaintiff deposition be taken within 90 days of the suit answer date. Defense counsel should document on an invoice the fact approval was given and identify the company person who gave the approval.

Deposition Reports are to be provided within 30 days after the deposition has been conducted. The reports are to include:

- a) Narrative summary of deponent's testimony
- b) An evaluation of the impact on the case even if it has not changed from previous evaluations
- c) An evaluation of the type of witness the deponent makes

G. Alternative Dispute Resolutions (ADR)

When appropriate, Defense Counsel should look to utilize all appropriate alternative dispute resolutions to resolve cases. This is especially encouraged during the early stages of the matter where liability is clear. The Claim Professional and Defense Counsel should discuss in detail the Mediator/Arbitrator to be used. Mediators who are message takers should be avoided. The selected Mediator should be an individual familiar with the venue and has a genuine interest in bringing both parties together in an attempt to settle the claim. Every effort will be made by the Claim Professional to personally attend all Arbitrations/Mediations/Trials that have a value of \$50k or higher. Otherwise an approved independent adjuster will attend for the Claim Professional. Settlement authority remains with the Claim Professional

H. Settlement

In situations where there is no viable defense to a claim and where there is a significant risk of an adverse finding against a Verus Insured, all efforts should be made to effect settlement as early as possible in the litigation. The use of mediation and other non-binding alternative dispute resolution techniques is encouraged.

Defense Counsel shall notify the Verus Claims Professional, in writing, no later than **10 business days** after they become aware of any settlement conference or mediation. If the date is adjourned, Defense Counsel shall notify the Verus Claims Professional as soon as a new date has been set.

Defense Counsel should immediately convey all settlement offers received to both the Insured and the Verus Claims Professional.

Defense Counsel should not initiate any settlement discussions or negotiations without our prior written consent from the Verus Claims Professional and the Insured, if such consent is required. Requests for settlement authority, where appropriate, must be made well in advance of a settlement conference or other decision date (a minimum of **14 business days** in advance) and must be accompanied with a reasonable basis for such request.

IV. Billing Guidelines

Unless otherwise stated in any *Unit Specific Additional Guidelines* that may be attached hereto, the following Billing Guidelines shall apply to all matters assigned to Defense Counsel by any Verus Operating Unit.

A. General Billing Guidelines

We expect you to exercise critical judgment about the number of hours reasonably and productively devoted to the matters assigned to you by Verus Claims

Professionals, and expect you to review each and every bill before it is sent to us for consideration.

Certain tasks and costs involved in legal matters are clerical or administrative in nature. We presume that your hourly rates include all such clerical or administrative costs and we will not pay for them. Examples of costs that fall into this category are:

- Opening/closing files
- Attempted telephone calls and voicemail messages
- Preparation and review of internal memos which are instructional, educational, supervisory or administrative in nature
- Supervisory, file, or work product reviews
- Budget preparation
- Scheduling meetings, appointments, depositions, private mediation sessions
- Scheduling and arrangements for IMEs
- Calendaring
- Conflict checks
- Checking dockets
- Checking court calendars
- Serving/filing motions or discovery
- Searching court files
- E-filing
- Routine communications with the court clerk
- Organize and re-organize files
- Bate stamping and date stamping
- Indexing file materials (unless professional judgment as to the index categories must be utilized)
- Collating or tabbing file materials
- Processing vendor bills
- Preparation of firm invoices
- Enclosure letters
- Receipt and distribution of mail
- Copying
- Receipt/review of time stamped or file marked copies of pleadings, documents or discovery received back from court
- Word processing/document/scanning/imaging production
- Pick-up and delivery of documents and records
- Telephone calls and/or correspondence to copy services, court reporters and translation services
- Making travel arrangements and reservations
- Creating and organizing folders, binders and notebooks
- Pulling and copying documents from file

B. Billing Rates:

All hourly billing rates must be agreed to between Defense Counsel and the Verus Claims Professional, in writing, *prior to retention*.

(1) Rate Increases

Defense Counsel must submit requests for hourly rate increases, in writing, to the SVP of Claims at Verus. Hourly rate increases will be honored only if approved in writing by the SVP of Claims.

As a general rule, any approved rate increase shall apply only to assignments made after the approval of the increase. Any exceptions from this rule must be approved, in writing, by the SVP of Claims.

(2) Flat Charges/Minimum Charges

Defense Counsel shall not apply flat charges as part of its rate structure unless such flat charges have specifically been agreed to by Verus. Further, Defense Counsel shall not apply any minimum charge for any activity.

(3) Frequency of Billing/Billing Increments

All cases shall be billed on a *monthly basis*.

Each matter is to be invoiced separately. Your bills should include:

- The case name, the Insured's name and the claim number;
- All bills must be generated using time and disbursement entries that include the ABA/ACC Uniform Task-Based Management System litigation code set (UTBMS Codes). Individual billing entries setting forth the date of each task, the name or initials of the timekeeper performing the task, the subject or purpose of the task, the sender or recipient of the communication, and the time for the task billed in tenths of an hour (0.10) increments. Do not "block bill" or aggregate numerous activities in one time entry. Vague time entries will not be paid until sufficiently detailed information has been provided for them;
- A summary showing the total number of hours billed by each timekeeper, the total number of hours billed by all timekeepers and the total dollar amount billed by all timekeepers, as well as the total billed on the matter to date; and,
- An itemized list of all reimbursable expenses, including receipts for all outside expenses in excess of \$25.00. Court costs are exempt.

Preparation of bills is an overhead expense item. As such, Verus will *not* honor any billing entries for bill preparation. We specifically reserve the right to reduce an invoice that we believe does not comply with these guidelines.

(4) **Final bills** shall be submitted within **30 days** following the conclusion of the case, and must be clearly marked and/or labeled as “**FINAL BILL.**”

(5) Intra-Office Conferences/Multiple Attorneys/File Reviews

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

Unless otherwise approved in advance, only **one** attorney is authorized to attend depositions, meetings, arbitrations, mediations, settlement conference, court appearances, etc.

Verus will not pay for repetitive file reviews which result from assignment of multiple attorneys to a case.

(6) Research

Since assignments are made to firms which have been selected for their expertise in a particular area of law, Verus will not pay for research which is routine in nature. We will only pay for research conducted as an extension or revision of prior research or knowledge required to update or make current existing knowledge or prior research. Unless otherwise approved by the Verus Claims Professional, we will **not** pay for prior research to be conducted *de novo*.

Defense Counsel must consult with the Verus Claims Professional prior to initiating any legal research project requiring over **four (4) hours**. Defense counsel should document on an invoice the fact approval was given and identify the company person who gave the approval. There is no reimbursement for Westlaw, LexisNexis or computerized legal research cost. For any such project, copies of all research memoranda must be provided to the WRBC Claims Professional.

(7) Paralegal Services

Verus will not pay for either attorney or paralegal services which are clerical in nature, including, but not limited to, file organization, entry of data on a spreadsheet or claims bordereaux where such activity does not add significant value to the case.

The following tasks have been deemed appropriate for a paralegal timekeeper:

- Preparation of form interrogatories
- Preparation of expert interrogatories
- Preparation of requests to produce
- Preparation of demand for statement of damages
- Preparation of record subpoenas
- Preparation of deposition subpoenas
- Preparation of records request(s) if copy service used.
- Follow up on records requests and subpoenas.
- Preparation of authorizations/release forms to secure records (medical, tax, IRS, employment, union).
- Preparation of verification forms

- Preparation of notices of deposition
- Preparation of entry of appearance
- Preparation of jury demand
- Summarize answers to interrogatories and requests for production.
- Summarize depositions (page line summary/digest)
- Summarize employment records
- Summarize medical records
- Preparation of medical indices/chronologies.
- Preparation of trial notebooks
- Preparation of form notices such as notice of hearing or notice of filing
- Factual research such as background checks, social media investigation, locating witnesses.
- Preparation of routine motions to compel

C. Specific Expense Items:

(1) Professional Services

Defense Counsel shall obtain prior written approval from the Verus Claims Professional prior to retaining any individual or company to conduct surveillance, provide expert opinions, consultants, investigators, temporary attorneys or outside paralegals, or any other professional services. Defense counsel should document on an invoice the fact approval was given and identify the company person who gave the approval.

(2) Photocopying/Duplicating

In-house photocopying should be charged at actual cost not to exceed \$.10 per page, \$.50 for color copy page. On your bill, indicate the price per page charged and the number of copies produced. Outside photocopying is to be used as a cost saving measure for voluminous projects and not as a method to handle overflow or for the firm's convenience. Verus will not pay more than \$.15 per page by an outside service. Documentation from the outside service validating the charge must be included.

(3) Telephone/Fax

Verus will reimburse Defense Counsel for the actual long distance telephone line charges incurred to send faxes and for long distance calls.

(4) Postage

Electronic-mail should be used whenever possible. Materials should be completed in time to avoid the unnecessary use of express mail, courier, or delivery services. Regular first class postage charges are considered to be part of your firm's overhead and will not be paid. Express mail, courier, messenger, and delivery services are also

typically considered to be part of the normal overhead costs of a law firm. We will not reimburse you for the costs of such service, except when the use of such service was at our request, if an emergency situation occurs over which your firm has no control, or with our approval. Reasonable fees for filing of court documents will be reimbursed.

(5) Mileage and Travel

Local Travel is defined as travel to or from locations within a 75 mile radius of the firm's office. Firms that provide statewide representation to Verus should consider all travel within the state as "local travel." We consider local travel to be normal law firm overhead and not reimbursable from an hourly rate perspective (i.e non-billable time). In addition, we will not pay for local travel expenses, such as mileage, tolls, parking, or local public or private transportation.

Out-of-Town Travel is defined as travel to or from locations outside a 75 mile radius. We will pay full hourly rate for actual work performed on a matter while traveling and 50 percent of the timekeeper's approved hourly rate for all non-productive long distance travel time.

For long distance automobile travel, the date of travel, person engaging in the travel, destination, purpose of the travel, number of miles traveled, price per mile reimbursed and the total cost of the trip must be on your bill. We will not pay more than the rate allowed by the IRS for the year in which the trip was made. Receipts for parking, tolls, taxi fare, etc. must accompany the request for reimbursement.

All air travel requires pre-approval by the Verus Claims Professional and must be economy/coach class. Defense Counsel must retain the airline ticket receipt and submit it with the firm's bill. Verus recognizes that there could be instances in which air travel is necessary and prior permission cannot be obtained. The appropriate Verus Claims Professional will review expenses incurred in such instances on a case-by-case basis.

You are required to stay at moderately priced hotels or motels. A copy of the actual hotel or motel receipt must be submitted for reimbursement. The maximum allowable reimbursement for meals is \$50.00 per day during trips and overnight stays. A copy of the actual meal receipts must be submitted for reimbursement.

(6) Overtime Meals and Transportation

Although it may be necessary at times for your staff to work overtime on Verus matters, we have no control over your workload or work assignment priorities. Therefore, Verus considers meals provided to overtime to staff working overtime, as well as transportation to or from firm offices, to be a firm overhead cost. Accordingly, Verus will not pay for staff overtime meals or transportation.

(7) Disbursements/Advances

Routine expenses incurred (up to \$1,000 for any single expense) should be paid directly by the law firm and billed to us as disbursements pursuant to our monthly billing policy. Any invoices forwarded directly to us for payment must include the vendor's tax ID or Social Security number. All expenses must contain supporting documentation that will be forwarded with the payment request.

(8) Auditing and Review

We monitor all aspects of our legal costs to ensure compliance with our guidelines. We inquire about bills on a regular basis and expect your cooperation in responding to such inquiries. We reserve the right to audit all bills. You are required to maintain our files for **24 months** from the date the matter closes and all necessary bills, pre-bills, receipts, and records and make them available to us upon reasonable notice.