**GLOBAL RETAIL MARKETS (GRM)**

**BUSINESS & PERSONAL LINES**

**AUTO & GENERAL LIABILITY**

IMPACT REPORTING

REFERENCE GUIDE

FOR USE BY OUTSIDE COUNSEL

Effective Date: August 1, 2020

**INITIAL CASE EVALUATION**

***(Prepared and sent within 10 business days of referral)***

***To include Strategy, Litigation Plan & Expense Estimate***

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| **Impact Reporting** | **Service Level Agreement /Compliance** | **Suggested Analysis** |
| 1. **Allegations:** (Brief statement of facts) |  | This should be a concise, high level summary. See example below |
| 2.  **Issues:** |  | What is at issue? What is plaintiff seeking? What is plaintiff’s theory of liability and damages? What strategies and tactics is plaintiff using (e.g., Medical Specials, Letters of Protection, Third Party Funding, Reptile Theory, etc.)? What are the defenses? Also include any issues of jurisdiction, venue, Statute of Limitations. |
| 3. **Initial Strategy:** | *Was an initial litigation strategy discussed and agreed to by Claims and Counsel?* | State the actual strategy (Answer Only, Limited Discovery, or Full Discovery) in which the case should be placed. In addition, confirm the litigation strategy was discussed and agreed to by Claims and Counsel. Examples could be:   * Per our conversation of 1-21-20, we agreed that this case should initially be placed in and Answer Only. * I agree with your recommended strategy of Limited Discovery.   Counsel also needs to specifically state the defense strategy that will address the plaintiff’s theories of liability and damages including plaintiff’s strategies and tactics (e.g., Medical Specials, Letters of Protection, Third Party Funding, Reptile Theory, etc.) |
| 4. **Litigation Plan:** | *Was an Action Plan formulated, communicated and agreed to by Claims and Counsel, with target dates?* | What is the overall agreed upon plan for handling and defending this case? Counsel needs to specifically state the plan of action for countering plaintiff’s theory of liability and damages. Who is going to do what to achieve the plan? Completion dates should be included in this note. Comments should also be made generally if there are potential strategies and actions that were considered but eliminated in concert with claims. For example, it should be noted that potential motions such as change of venue, to dismiss, Summary Judgment, etc., were considered but for strategic or other reasons were not acted on. The same with other case handling decisions such as retaining experts. |
| **5.** **Expense Estimate: Budgets are expected in cases where litigation costs are estimated to exceed $5,000, given the scope of the strategy *(See Budget Template)*** | *Was an expense estimate established, communicated and updated as required?* | Generally speaking, Claims is seeking estimates for legal expenses where the defense costs are expected to exceed $5,000, given the scope of the agreed strategy. The standard templates should be utilized. The Initial Case Evaluation should include comments regarding the projected litigation costs and a reference to a more detailed budget sent under separate cover. For example, “Regarding the budget, it is estimated that the legal fees and expenses would total $12,000. A more detailed expense estimate is being sent to you under separate cover.” |
| **6. Other** |  | Are there any other comments that should be included in the Initial Case Evaluation that do not fit into any of the categories above? If so, they should be included here. |

**Initial Case Evaluation**

**SAMPLE**

***To include Strategy, Litigation Plan & Budget or Expense Estimate***

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| Firm - Initial Case Evaluation/ Strategy/Litigation Plan/Expense Estimate  ALLEGATIONS: This note confirms our telephone conversation and agreement on February 15, 2020. This case involves a disputed motor vehicle accident in Springfield, Missouri on December 15, 2018. The initial police report indicated that the collision took place at an uncontrolled intersection. Based on the Complaint, plaintiff alleges a herniated disc as a result of the accident. Plaintiff is also alleging loss of wages and earnings capacity, medical expenses and pain and suffering. Mrs. Plaintiff is also making a loss of consortium claim.  ISSUES: This is a disputed liability case. We will need to establish which vehicle had the right of way. The description of the accident and credibility of the parties will be important to determining liability. Also at issue is whether the claimed injuries and damages were caused by the accident, the reasonableness and necessity of the treatment incurred, and the amount of claimed special and general damages. Plaintiff’s theory on damages appears to be unreasonable and driven by a desire to recover a significant monetary award. (*Note: Address other issues with specificity here)*  INITIAL STRATEGY: We agreed that this case should be placed in the Limited Discovery strategy. We will focus not only on liability, but also on the veracity of the claimed injuries and damages so that we may capture the realistic exposure for this case. (*Note: Address other issues with specificity here)*  LITIGATION PLAN: Claims will 1) obtain plaintiff’s medical records; 2) provide photos of the vehicles; and 3) determine whether plaintiff has been involved in any prior or subsequent accidents. Target completion date is 3/15/20.  Firm will file an answer generally denying the allegations. We will also send out the standard set of opening interrogatories and requests for production of documents to plaintiff, making sure that we target plaintiff’s theory of liability and damages. Target completion date is 3/15/20.  Counsel will follow up with Claims and report pursuant to the SLAs including collaborating on further discovery and litigation strategy  EXPENSE ESTIMATE: I will be sending to you a more detailed budget under separate cover. However, the initial expense estimate is $10,000.  OTHER: The other issues of medical and lost income can be discussed later and after receipt of the discovery responses from plaintiff. We should direct our attention to the possibility of being dismissed from this case if we can show that Acme is not responsible party.  Joe Smith/Attorney/Firm |

**DEPOSITION SUMMARY**

***(Prepared and sent within 10 business days of Deposition, or 5 business days if there is a deadline or the depo content materially changes the case strategy)***

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| **Impact Reporting** | **Service Level Agreement /Compliance** | **Suggested Analysis** |
| **1. Deponent Information:** |  | Who was deposed? When was the deposition? How does this person fit into the case? The length of the summaries should be brief and high level. |
| **2. Deponent Assessment:** |  | How did the deponent present? How would this person come across before a jury or judge? Comments on credibility, qualifications? |
| **3. Testimony Highlights:** |  | What was the testimony regarding liability and damages? What was surprising or unexpected from this deponent? |
| **4. Impact:** | *As discovery developed, including depositions, was Claims advised as to how it impacted liability and damages* | What is the impact of this deposition insofar as it relates to liability and damages? Counsel should specify how the testimony impacts plaintiff’s strategies and tactics, if any (e.g., Medical Specials, Letters of Protection, Third Party Funding, Reptile Theory, etc.), as well as corresponding defense strategies. How does the testimony support or refute the plaintiff’s theory of liability and damages? Does this testimony change the theory of defense? Does the deposition open a window of opportunity to resolve this case? |
| **5. Recommendations:** | *Does the file reflect that appropriate discussions were held with Claims regarding the possibility of amending strategies during the course of the case? Were the expense estimates modified, if necessary, during the course of the case?* | Is it recommended that the Litigation Plan be revised as a result of this deposition? If so, what are the recommendations? Who is going to do what by when? Also consider the following: adding parties, additional defenses, filing appropriate motions, obtaining experts, attempting settlement at this time, additional discovery, etc.? Should the strategy or budget be updated? |

**DISCOVERY SUMMARY**

***(Prepared and sent within 10 business days of receipt of Discovery)***

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| **Impact Reporting** | **Service Level Agreement /Compliance** | **Suggested Analysis** |
| **1. Nature of Discovery:** |  | What is the nature of the discovery e.g., interrogatories, request for production of documents, admissions, etc.? From whom was it received? How does this discovery fit into the case? The length of the summaries should be brief and high level. |
| **2. Discovery Highlights:** |  | What is important to claims regarding the responses to the discovery? What responses were there regarding liability and damages? What was surprising or unexpected from this discovery? |
| **3. Impact:** | *As discovery developed, including depositions, was Claims advised as to how it impacted liability and damages?* | What is the impact of this discovery insofar as it relates to liability and damages? Counsel should specify how the discovery impacts plaintiff’s strategies and tactics, if any (e.g., Medical Specials, Letters of Protection, Third Party Funding, Reptile Theory, etc.), as well as corresponding defense strategies. How does the discovery support or refute the plaintiff’s theory of liability and damages? Do the discovery responses change the theory of defense? Do the discovery responses open a window of opportunity to resolve this case? |
| 4. **Recommendations:** | *Does the file reflect that appropriate discussions were held with Claims regarding the possibility of amending strategies during the course of the case? Were the expense estimates modified, if necessary, during the course of the case?* | Is it recommended that the Litigation Plan be revised as a result of this deposition? If so, what are the recommendations? Who is going to do what by when? Also consider the following: adding parties, additional defenses, filing appropriate motions, obtaining experts, attempting settlement at this time, additional discovery, etc.? Should the strategy or budget be updated? |

**INTERIM ACTIVITY**

***(Prepared and sent within 1 week of trigger event)***

***Example trigger events could include Court Appearance, Settlement Information, Meeting with Insured***

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| **Impact Reporting** | **Service Level Agreement**  **/Compliance** | **Suggested Analysis** |
| **1. Reason for Update:** | *Was the action plan timely and aggressively executed?* | Why is the file being updated? What are the truly significant developments that impact liability and/or damages? What is the status of the Litigation Plan? Should there be modifications to the Litigation Plan? Include future follow-up dates. |
| **2. Impact:** | *Was the strategy /plan re-evaluated and agreed to by Claims and Counsel as new information was developed? Was the expense estimate established, communicated, and updated as required?* | What is the impact regarding the interim activity? Why is it important? How do the developments noted above impact the plaintiff’s theory on liability and/or damages? How does the developments noted above impact the defense? Counsel should specify how the development impacts plaintiff’s strategies and tactics, if any (e.g., Medical Specials, Letters of Protection, Third Party Funding, Reptile Theory, etc.), as well as corresponding defense strategies.  Based on the information that is being updated, should there be a discussion with Claims regarding the strategy? Should it be changed? If so, communicate with Claims and document any agreed change to the strategy.  Does this new update require the Litigation Plan to be reevaluated? Should the Plan be modified in any way due to this information? If so, communicate with Claims and document any agreed change to the Litigation Plan.  Has the budget been reviewed lately? Does it need to be updated or modified at this time? Does it accurately reflect what the file has cost to date and what it is expected to cost through discovery? |

**Defense Counsel Pre-Trial Report**

**(Prepared and sent 2 months before trial)**

**Claim #** Click here to enter text. **Adjuster** Click here to enter text.

**Date** Click here to enter a date. **Prepared by** Click here to enter text.

**Trial Date** Click here to enter a date. **Court** Click here to enter text.

The trial plan should be a succinct summary of the whole case. When it is read by Claims and insureds, there should be no doubt that Counsel has a total grasp of the facts, issues, witnesses, etc. The plan should convey that Counsel, in concert with his/her client, has a blueprint as to how the case will be presented at trial. In this report, Counsel should also address plaintiff’s strategies and tactics expected to be presented at trial (e.g., Medical Specials, Letters of Protection, Third Party Funding, Reptile Theory, etc.), as well as corresponding defense strategies.

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| **Impact Reporting** | **Analysis** |
| Trial Strategy: | Has there been an agreement with Claims to put this case into Trial Strategy?  Click here to enter text. |
| Trial Plan Overview: | Facts of the case and how they will be presented at trial, including expected witnesses and testimony  Click here to enter text. |
| Liability: | Plaintiff’s theory of liability, including allegations against co-defendants  Click here to enter text.  Theory of defense and facts in support thereof, including applicable immunities  Click here to enter text.  Estimated % chance of verdict in favor of insured  Click here to enter text.  Estimated comparative negligence of parties  Click here to enter text. |
| Damages: | Personal injury: Describe injury, permanency claimed, pre-existing conditions and causal relationship of injury to accident. Include age, sex, marital status, occupation at time of loss, current occupation or disability status and IME results, if applicable.  Click here to enter text.  Alleged Medical Specials Click here to enter text.  Verified Yes  No  Alleged Future Medical Click here to enter text.  Alleged Lost Wages Click here to enter text.  Verified Yes  No  Alleged Future Income Loss Click here to enter text.  Can future damages be reduced to present value? Yes  No  Total special damages likely to be considered by jury Click here to enter text.  Range of general damages without discounting for liability  LOW VALUE Click here to enter text. LIKELY VALUE Click here to enter text. HIGH VALUE Click here to enter text.  Property damage and other non-personal injuries:  Click here to enter text.  \*Have punitive damages been pled? Yes  No  If yes, explain the threshold requirements, amount recoverable.  Click here to enter text.  Other damages  Click here to enter text.  Pre-judgment and post-judgment interest potential? If so, how calculated?  Click here to enter text.  Lien holders  Click here to enter text. |
| Assessment: | Venue: Click here to enter text. Jurisdiction: Click here to enter text.  Key strengths and weaknesses of the case. Include an assessment of the judge, opposing counsel, parties, key witnesses (include brief statement of favorable and unfavorable testimony including experts) and the venue (advantage or disadvantage to all parties/jury pool)  Click here to enter text.  Settlement status (last demand, last offers)  Click here to enter text.  Pre-trial motions, motions in limine and chances of success  Click here to enter text.  Pre-judgment interest? Yes  No  Calculation? Click here to enter text.  Post-judgment interest? Yes  No  Calculation? Click here to enter text.  Verdict potential (insured and all parties).  What is the maximum expected verdict, with interest? Click here to enter text.  What is the probable verdict, with interest? Click here to enter text.  Should a hi-lo be considered? Click here to enter text.  Statutory caps (if any) Click here to enter text.  Settlement potential and recommended strategy (if applicable)  Click here to enter text.  If multiple defendants are involved, can we and/or should we attempt to settle out? Click here to enter text.  What are your proposed jury instructions? Is plaintiff likely to agree? What will the jury see on the verdict form?  Click here to enter text. |
| Other: | Has the Insured/Defendant and/or Excess/Umbrella carrier been advised of all demands and offers? Their reactions? Duty owed to Excess/Umbrella carrier?  Click here to enter text.  Should an appeal be necessary, what are the rules of the court? Number of days to file Post-Trial Motions, number of days to appeal, potential costs of appeal, cost of appeal bond (or will available policy coverage be acceptable?)  Click here to enter text.  Other issues, concerns and comments  Click here to enter text. |
| Expense Estimate: | Updated expense estimate through trial. If the previous estimate is still applicable, there should be an affirmative statement to claims acknowledging that the previous budget is still viable.  Click here to enter text. |