

## COVERAGE LITIGATION PROTOCOLS March 2016

**These Coverage Litigation Protocols are incorporated into the Liberty Mutual Guidelines for Law Firms, effective December 1, 2015. See Guidelines at Section IV, Paragraph A, Subsection (b). Failure of outside coverage counsel to comply with these Protocols may result in reassignment of cases and removal from the Coverage Panel.**

These protocols apply to all litigation pertaining to coverage disputes, filed by or against a Liberty Mutual Insurance entity/underwriting company (“LM”), as well as coverage litigation contemplated by LM. These protocols apply only to coverage actions where LM is a party to the litigation, meaning LM is named in the lawsuit.

Note: For purposes of these protocols, the Coverage DJ Unit (“DJ Unit”) includes all liability, first party property and environmental/toxic tort coverage litigation and the term “DJ Unit Attorney” includes attorneys handling liability, first party property and environmental/toxic tort coverage litigation.

### **What Is and Is Not Coverage Litigation?**

**Coverage Litigation** includes all suits where:

- (1) LM files a Declaratory Judgment (“DJ”) action or lawsuit against a policyholder, another insurer or a third party asking the Court to determine whether coverage under a LM policy applies, or
- (2) A policyholder, another insurer or third party files a complaint, cross-claim, third party complaint or any other pleading against LM asking the Court to determine whether coverage under a LM policy applies.

#### **First Party Auto:**

These protocols do not apply to auto first party matters, such as PIP, No-Fault, UM/UIM, **unless** coverage under the policy is an issue. Note: issue of validity of a UM/UIM rejection form could have statewide implications and is considered coverage litigation.

#### **First Party Property:**

These protocols apply to first party property matters involving coverage disputes.

### **1. Referral to DJ Unit**

All coverage litigation must be processed through the Service of Process team (“SOP”). In some cases, LM’s first notice of a complaint is from LM’s registered agent, Corporate Services Company (“CSC”), and in other cases, the first notice to LM is from some other source. In addition to suits against LM, complaints filed by LM must be processed by the SOP team.

- **Service On CSC:** The SOP team automatically receives all complaints that are served on LM through CSC. When coverage litigation is identified, the SOP team sends a CSC notice to the appropriate individuals in the claims and legal departments. When the claims adjuster receives a CSC Notice from the SOP team, relating to coverage litigation, the adjuster should

immediately contact the DJ Unit attorney assigned to the state of the litigation (*see “Appendix A – DJ Unit Liability Assignments” section below*) to discuss selection of counsel. Do not resend CSC Notice to SOP team.

- **Service Not Through CSC:** All matters that have not been served through CSC or processed by the SOP team should be forwarded immediately to the SOP team at [LegalService\\_of\\_Proc@LibertyMutual.com](mailto:LegalService_of_Proc@LibertyMutual.com). These matters include new suit notifications from any source other than CSC and any coverage litigation filed against LM.
- **Litigation Filed or Anticipated by LM:** To refer a matter to the DJ Unit, send pleading or other material to the Service of Process team (“SOP”) at [LegalService\\_of\\_Proc@LibertyMutual.com](mailto:LegalService_of_Proc@LibertyMutual.com).
- **Consult Auto and General Liability Claims Segmentation Guidelines:** On Commercial Insurance Liability claims, the claims case handler should consult the Auto and General Liability Claims Segmentation Guidelines, under the “Coverage Litigation Segmentation Triggers” section, to determine if the coverage matter should be referred to the Coverage Litigation Unit in Complex Claims.

## 2. Selection of Coverage Counsel

For all coverage litigation, whether contemplated or pending, the claim handler and DJ Unit Attorney will discuss and agree on the selection of coverage counsel **prior to the matter** being referred to outside coverage counsel. Outside coverage counsel will be selected from the appropriate Approved Coverage Panel. Claims will provide outside counsel with all materials needed for initial review and evaluation, including all relevant certified policies and claim files.

## 3. Separate Claim File for Coverage

Except in situations where no conflict exists with the named insured, whenever LM initiates or is contemplating coverage litigation or is served with a complaint related to coverage, if there isn’t already a separate claim set up for coverage, the claims handler will create a separate coverage file with a different claims adjuster. The separate coverage and liability claims will be controlled access.

## 4. Strategic Consultation Required

To ensure the DJ is handled in the most efficient manner, a strategic consultation with outside counsel, the claims coverage adjuster, and DJ Unit Attorney must take place **PRIOR** to outside counsel taking any action, such as preparing a coverage opinion, or drafting a coverage position letter or DJ complaint. This strategic consultation is a **critical step that must be taken PRIOR** to instituting, or responding to, any coverage litigation.

During the strategic consultation, outside coverage counsel shall provide an objective, candid, and frank assessment on the strengths and weaknesses of the case, likelihood of success, options to litigation, and potential consequences of litigation. Counsel will discuss a clearly outlined litigation plan, including discovery strategy, and a rough estimate of litigation cost.

## **5. Pleadings and Dispositive Motions – Advance DJ Unit Attorney Approval Required**

Outside counsel shall provide the DJ Unit Attorney with drafts of all pleadings and dispositive motions, including complaints, answers, motions to dismiss, and motions for summary judgment, for review and approval, **prior** to taking any action such as service, filing or communicating to adverse parties. These drafts must be provided no later than seven (7) days in advance of any due date. Pleadings and dispositive motions should not be filed without approval of the DJ Unit Attorney.

## **6. Discovery Must Be Coordinated With HO Legal DJ Unit**

Upon receipt of discovery in the coverage litigation (Interrogatories, Requests for Production of Documents, or Requests for Admission), the outside coverage attorney and/or coverage adjuster must immediately send such discovery to the assigned DJ Unit paralegal to assist with the document search and identify appropriate persons to respond to the discovery. Outside coverage counsel must provide draft discovery responses to the coverage adjuster, DJ Unit Attorney and the DJ Unit paralegal at least seven (7) days before they are due for review and approval.

## **7. Confidentiality Agreement/Protective Order Required**

Certain documents, including but not limited to claims guidelines, underwriting manuals and training materials, can only be produced subject to a confidentiality agreement or protective order, which the DJ Unit Attorney must approve.

## **8. Status Updates Required**

Outside coverage counsel shall keep the coverage adjuster and the DJ Unit attorney informed of all significant developments in the litigation by providing regular status updates, which include an assessment of the coverage litigation, a summary of case activity, discovery and motion practice, developments in the case, and recommendations on a going-forward strategy. These updates shall be provided at least quarterly and more often if appropriate. The DJ Unit attorney must be involved in all strategy discussions relating to the direction of the case, including dispositive motions and whether appellate review is appropriate.

## **9. Approval Required For All Appeals**

Note that all appellate briefs must be approved by the DJ Unit Attorney. Please refer to the LM Appellate Protocols.

## **10. Depositions of Liberty Mutual Employees**

Deposition notices seeking testimony or documents from LM personnel served in coverage litigation must be immediately referred to the assigned DJ Unit Attorney and DJ Unit paralegal. All LM employees are required to confer with a DJ Unit Attorney prior to providing testimony and/or documents. Outside counsel should not identify and/or produce a LM employee as a deponent, unless this conference has taken place.

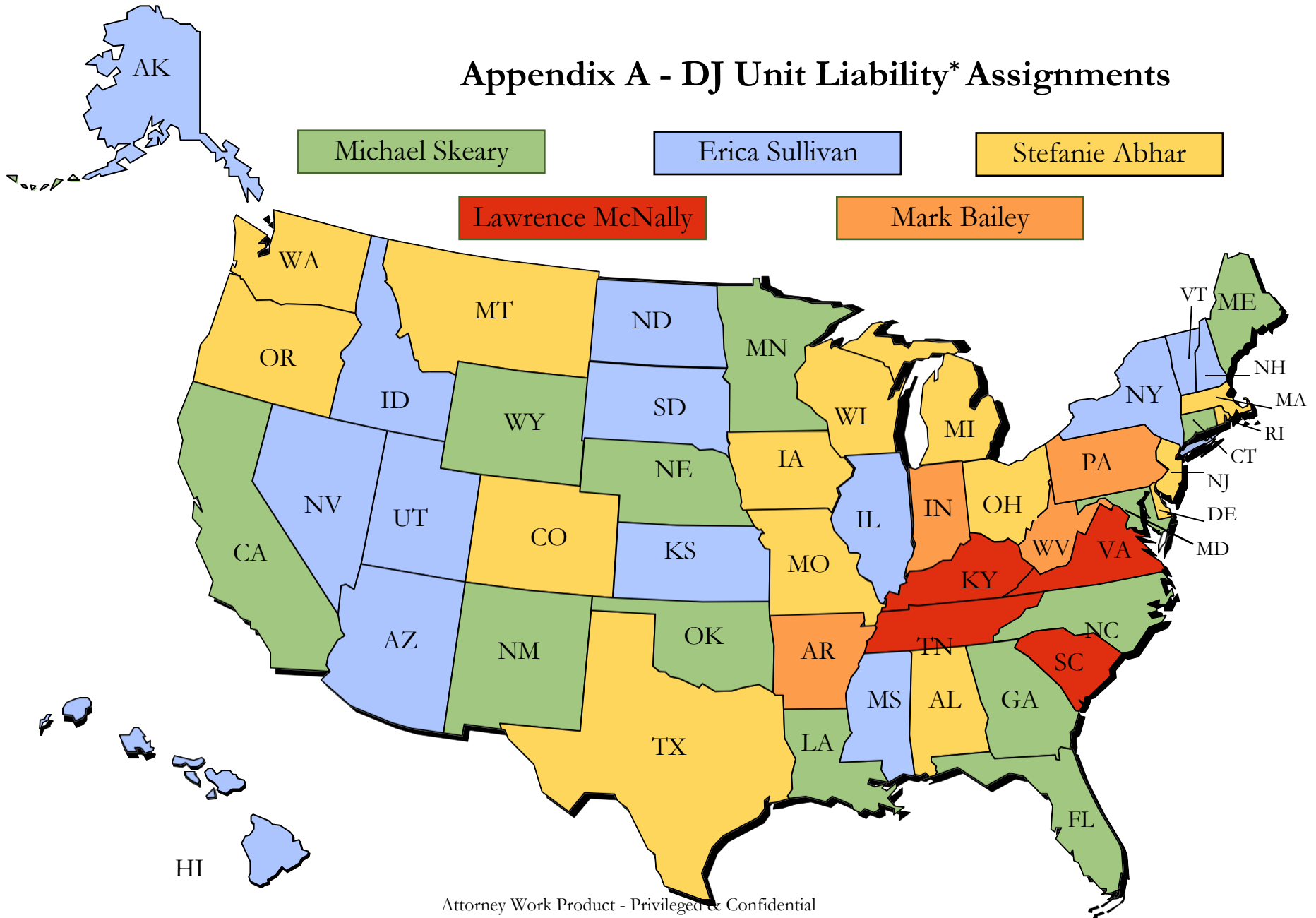
## **11. Extra-Contractual Allegations**

Outside coverage counsel and claims are required to notify the DJ Unit immediately in the event of extra-contractual allegations against LM, including any allegation of bad faith or unfair claim handling practice on the part of LM. Upon notification of such allegations, the DJ Unit Attorney will confer with the HO Legal Litigation Attorney for further handling. Extra-contractual allegations may not be asserted in any coverage litigation by LM without explicit written consent of the DJ Unit Attorney.

## **11. LM Entities**

Counsel is required to confirm the correct LM entity involved in the litigation. Counsel is not permitted to file litigation on behalf of one LM entity against another LM entity.

# Appendix A - DJ Unit Liability\* Assignments



Attorney Work Product - Privileged & Confidential

\* Please note this only applies to Liability cases. See State Assignment Chart for First Party Property assignments