

APPENDIX A1 – DEFINED ROLES AND BEST PRACTICES FOR NCC AND LOCAL COUNSEL

This document is intended to describe the respective roles of, and provide guidance to, national coordinating counsel (“NCC”) and local counsel. The roles and guidance delineated herein are an attempt to achieve best practices and shall be applied where possible and appropriate, with any intended or necessary departures from such practices to be discussed with the insured and carriers (collectively “stakeholders”). The goal of this document is to promote efficiencies in both case handling and billing practices, to reduce duplication of effort and eliminate unnecessary legal expense, while ensuring the best result possible in litigation for insureds.

This document serves as a guide; every account and every lawsuit presents its own unique facts and circumstances. All participants must consider the facts and circumstances of each account and case in applying these standards. Nothing contained in this document is intended to restrict, nor shall it restrict, defense counsel’s independent exercise of professional judgment in rendering the most effective and efficient legal services for the insured. This document does not replace these Guidelines or any other carriers’ guidelines which the firms may be following but is meant to supplement them. The roles and practices outlined below should be determined in conjunction with the stakeholders.

A. National Coordinating Counsel (NCC)

1. National Account Litigation Strategy

- a. Develop corporate story and defense
- b. Determine overarching strategy for resolution of cases
- c. Settlement; Trial; Other Alternatives
- d. Identify specific litigation activity necessary to effectuate strategy
- e. Identify necessary and unnecessary discovery tasks
- f. Consider when/whether to approach settlement
- g. Conduct efficient communication of overarching strategy to local counsel
- h. Monitor to ensure compliance with overarching strategy

3. Product Investigation/Management

- a. Responsible for comprehensive product investigation and management of product information
- b. Identify and have a detailed understanding of products at issue in litigation
- c. Locate and manage documentation relating to products at issue
- d. Identify expert witnesses with respect to products and related documentation at issue

4. Expert & Witness Development

- a. Identify, retain and prepare appropriate product experts
- b. Identify, retain and prepare appropriate corporate witnesses
- c. Determine whether NCC or local counsel defends product expert and corporate witness depositions

5. Discovery Coordination

- a. Determine appropriate scope of role as custodian of corporate documents
- b. Determine whether to create/use an electronic repository, and the intended scope of its use
- c. Determine whether to create/use spreadsheets for document management and the appropriate scope of their use
- d. Manage document production of corporate documents and distribute in an effective and efficient manner to local counsel



- e. Provide standard discovery requests, responses and deposition questions to local counsel when appropriate, taking into consideration corporate story, products at issue, and defense strategy
- f. Allow local counsel, having the most familiarity with the rules of the jurisdiction to be primarily responsible for finalizing written discovery where appropriate
- g. Allow local counsel to attend depositions of parties and witnesses on individual cases when appropriate, taking into consideration the role of the party or witness in the litigation, whether plaintiff, co-defendant, fact witness, corporate witness, product expert or other experts

6. Trial Strategy (Limited Basis)

- a. Determine appropriate scope of role at any trial (e.g., appear as second chair to local counsel on an as needed basis)
- b. Ensure that trial presentation materials relating to corporate story, corporate witnesses and products are developed in accordance with overall account strategy

7. Communication

- a. Determine the frequency, type and form of reporting by NCC and local counsel on individual cases dictated by overall account strategy
- b. Ensure streamlined processes
- c. Assign specific reporting duties
- d. Agree on specific content and form of reports
- e. Avoid duplication of effort
- f. Avoid reporting to multiple levels in workflow
- g. Determine schedule and method for periodic sharing sessions to address “hot” cases with stakeholders, based on account needs
- h. Evaluate the need for spreadsheets or an extranet in capturing and/or reporting on information, determine the appropriate scope for such spreadsheets or extranet and eliminate other redundant reporting processes

8. Training

- a. Communicate overarching account strategy to all local counsel using most effective and efficient method
- b. Written manual
- c. Presentation slides
- d. Binder
- e. Communicate pertinent information relating to products at issue and corporate history
- f. Determine whether to conduct annual meetings or other periodic follow up meetings

9. Budgeting

- a. Determine the scope and frequency of budgeting process
- b. Submit proposed individual budgets for one-time projects for approval (e.g. development of experts, document review, product testing, training projects for local counsel)
- c. Submit proposed budget for day-to-day oversight of account for approval

B. Local Counsel

1. Responsibilities Generally

- a. Responsible for comprehensive understanding and effective implementation of account strategies on individual cases
- b. Execute or tailor account strategy to specific plaintiffs and jurisdiction



- c. Develop and recommend most effective individual case handling/exit strategies to effectuate account strategy and achieve appropriate results for the case, whether via settlement, discovery or trial, to NCC and stakeholders
- d. Understand corporate story and products at issue in the litigation
- e. Manage day-to-day case development and discovery
- f. Obtain appropriate product documentation and information for the litigation in accordance with governing protocol for NCC
- g. Coordinate with NCC to finalize appropriate discovery requests and responses for the litigation and jurisdiction, taking corporate story, products at issue, and defense strategy into consideration
- h. Coordinate with NCC and attend appropriate depositions of parties and witnesses on individual cases, taking into consideration the role of the party or witness in the litigation (plaintiff, co-defendant, fact witness, corporate witness, product expert or other experts)

2. Experts & Witnesses

- a. Coordinate use of appropriate product experts and corporate witnesses with NCC
- b. Identify, retain and prepare medical experts for specific cases
- c. Coordinate with NCC if a national medical expert is established for the account
- d. Consult with NCC and stakeholders relative to the roles of NCC and local counsel in defending product expert and corporate witness depositions
- e. Conduct depositions of all fact witnesses

3. Trial strategy

- a. Determine with NCC appropriate scope of role at any trial (e.g., prepare and appear as first chair unless determined otherwise)

4. Communication

- a. Determine with NCC and stakeholders the frequency, type and form of reporting on individual cases dictated by overall account strategy

5. Budgeting

- a. Determine with stakeholders the scope and frequency of budgeting process
- b. Submit proposed budget for day-to-day handling of individual litigation and, if applicable, any unique projects to appropriate parties for approval

