



DISTRICTS MUTUAL INSURANCE

LITIGATION MANAGEMENT MANUAL

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INTRODUCTION

On behalf of Districts Mutual Insurance (DMI), CCMSI provides claims administration services to DMI policyholders. CCMSI adjusts claims arising out of first party insurance and third-party liability policies (property loss, auto physical damage, auto liability, general liability, and Educators Legal Liability (ELL)).

OBJECTIVES

The purpose of this manual is to establish guidelines and objectives in handling assigned litigation cases. Within this manual, references to “college” includes parties DMI must defend by virtue of the insurance policy. Under a claims administration agreement, DMI has contracted with CCMSI to provide claims administration and litigation management. From the defense counsel’s perspective, the “college” is the client.

We are concerned essentially with four areas of litigation and case management.

- Selection of defense counsel.
- Claims personnel activities and responsibilities in the area of claim and litigation management.
- Duties and responsibilities of defense counsel.
- The proper relationship among counsel, claims personnel, and the colleges.

SELECTION OF COUNSEL

Filing a claim in Wisconsin naming a Wisconsin Technical College as a defendant is a codified process. Defense is “triggered” at the time the College receives a formal “Notice of Claim” and the College provides proper notice to DMI. It is at this juncture that claims defense begins. The following options are available for defense counsel:

1. DMI panel counsel would be assigned to provide defense and represent the College’s interests in the litigation process. DMI/CCMSI has a cadre of defense counsel that will be assigned by CCMSI to represent the college.
2. If the College’s “local counsel” has been recognized as DMI panel counsel – defense can reside with this attorney. The approval process as outlined in the Litigation Manual under the section titled “Selection of Counsel” will be required. In order for the attorney to be recognized as “panel counsel” the attorney will need to agree to abide by the terms and conditions of the Litigation Manual and agree to bill at the DMI approved rates for defense.
3. In the event the College seeks defense from an attorney not recognized as approved panel counsel, the College would remain responsible for all costs of defense up to the deductible. After the deductible is met, DMI will pay the approved rates for defense with the College being responsible for the difference between the DMI rate and the rate agreed upon by the College.

Defense counsel will be selected and placed on the approved list using certain criteria as outlined below. Approved Rates for Defense will be approved annually and provided to the colleges as an addendum to this manual and posted on the DMI website for reference.

A. Geographic Location

As a general rule, we prefer to have counsel operate within a 50-mile radius of his or her office. The exception is in remote areas. It is not cost-effective to have attorneys spend an excessive amount of time in traveling.

B. Expertise, Trial Experience, and Reputation

Generally, the assignments to defense counsel relate to liability arising out of governmental functions or other related specialty areas of the law. Special expertise is required to properly defend issues raised in litigation.

C. On Behalf of DMI, CCMSI Evaluates Defense Counsel in Terms of the Following:

1. Ability to identify and investigate all feasible defenses to liability and sources of recovery including non-parties and other sources favorable to the defense.
2. Aggressiveness and sufficiency of investigation and examination of witnesses including analysis of police and other investigative, medical, educational and employment reports.
3. Knowledge of the relevant law applicable to the claim and knowledge regarding best defenses to the claim.
4. Timeliness in filing effective and persuasive Motions for Summary Judgment.
5. Handling of opposing counsel.
6. Trial preparation.
7. Ability to provide complete and concise opinions supported by case law or other legal authority.
8. Timeliness in reporting to DMI/CCMSI on status and exposures of suit (see DUTIES AND RESPONSIBILITIES OF DEFENSE COUNSEL – Section B).
9. Face-to-face relationship with the colleges.
10. Aggressiveness and effectiveness in settlement negotiations.
11. Compliance with these guidelines and billing procedures.

CCMSI CLAIMS PERSONNEL ACTIVITIES AND RESPONSIBILITIES IN LITIGATION MANAGEMENT

A. Coverage

1. For the claims handler, the first step in the handling of a lawsuit is a thorough analysis of the entire Complaint and the DMI insurance policy to determine the college's rights to coverage.
2. In the event there are allegations that are not covered under the coverage documents, the claim handler will notify the college that there are allegations that are not covered. This notification will be done through a "reservation of rights" letter issued by CCMSI to the college with a copy sent to defense counsel. CCMSI's direct contact with the college is appropriate due to the contractual relationship that arises from the insurance policy.
3. On lawsuits tendered to CCMSI by the college where there is no coverage applicable, a coverage denial letter will be sent directly to the college with a copy to DMI.
4. If there is a question as to applicable coverage, the issues will be discussed with the Executive Vice President of DMI and the designee of CCMSI. If necessary, an independent opinion will be obtained from coverage counsel.

B. Extension of Time to Answer

1. When reviewing the Complaint, the first item to be addressed is the due date to file an Answer. There are situations where extensions are needed in order to explore coverage for final determination, case value, settlement possibilities, and the appropriate selection of counsel. CCMSI staff will confer with defense counsel regarding any extensions.
2. CCMSI staff will confirm extensions and extension renewals in writing, and advise defense counsel how to proceed. A copy of the letter must be sent to the college.

C. Referral of a Lawsuit to Counsel

1. In most cases, the initial assignment to counsel will be sent via e-mail tagged with a "read receipt". The initial suit assignment will include a memo indicating the party or parties to be defended. Only those parties indicated on the suit assignment should be defended as other co-defendants may not be covered or may not have tendered the suit to the carrier for coverage.

2. The initial assignment will include the following:
 - a. The DMI position on coverage.
 - b. A copy of any reservation of rights letters previously sent to the college.
 - c. An evaluation of the exposure.
 - d. Notification of any settlement demands.
 - e. An outline of any additional investigation to be performed by the claims staff.
 - f. A summary of the facts, if warranted.
 - g. Requests for specific legal research, if necessary.
 - h. Advice as to whether settlement negotiations are the responsibility of claims personnel and the status of current negotiations.
 - i. A complete copy of the claim file.
3. CCMSI will advise the college of the name of the attorney and law firm assigned to represent them in the lawsuit.

DUTIES AND RESPONSIBILITIES OF DEFENSE COUNSEL

For the defense attorney, the first step is a thorough analysis of the Complaint to determine the college's legal defenses while also understanding the college's contractual rights to indemnity and defense.

A. Assignment

1. Defense counsel must confirm receipt of the assignment within 24 hours (by email or phone), followed by a formal letter to CCMSI accepting the assignment. If a conflicts check is performed by the firm, CCMSI must be advised of a conflict within 48 hours from the time the attorney receives the assignment request.
2. Upon acceptance of the assignment, every effort should be made to contact the plaintiff's attorney immediately to acknowledge the lawsuit and advise of the suit assignment.
3. Defense counsel is expected to make contact with the college as soon as practical to advise the college on the defense process.

B. Initial Suit Status Report

1. Within 45 days of acceptance, defense counsel must report to CCMSI on the following information using the **Suit Status Report** format found on page 13 of this manual.
 - a. Counsel's initial evaluation of liability and damages.
 - b. Counsel's theory on liability and an outline of procedures to be followed in furthering the theory.
 - c. Counsel's plan for proceeding with discovery.
 - d. Identification of the serious issues for trial.
 - e. Discussion of settlement potential.
 - f. Recommended disposition and a comment on summary judgment.
 - g. An estimate of the full value of the case against the college if 100% liability attaches including an objective estimate regarding the likelihood that liability will be found against the college expressed as a percent.
 - h. Request for future claim investigation needed to assist in discovery.

- i. Outline of legal expense and defense budget.
2. With regard to the scope of items to be forwarded to CCMSI, we require receipt of all pleadings, dispositive motions and briefs in support of any party, court opinions/rulings, expert's curriculum vitae-rates-fees, and the defense attorney's periodic status reports.
3. Unless requested, CCMSI prefers not to receive proofs of service documents, copies of non-substantive general correspondence to other service providers, interrogatories, deposition notices, requests to produce, and other discovery requests and responses.
4. It is at the discretion of the college to request information from defense counsel regarding the progress of the litigation.

C. Case Handling and Subsequent Suit Status Reports

1. Counsel must advise CCMSI of the date of depositions, settlement conferences, final pre-trial conferences, case evaluation and trials. **Proper and timely notice must be given if CCMSI or DMI personnel attendance is required.**
2. Counsel must obtain authority from CCMSI prior to selection and retention of expert witnesses, additionally authority is required for any legal research that counsel deems necessary. Please contact CCMSI for pre-approval of expert witnesses and/or legal research. Engagement agreement including CV and fee schedule is required.
3. After the initial report, **Suit Status Reports** are due at 90 day intervals. Counsel must keep CCMSI advised of activity that transpires on the case on an ongoing basis (refer to page 13).
4. The college must be kept advised as to the status on an ongoing basis. Copies of all status reports to the college must also go to CCMSI.
5. Defense counsel represents the college. Any fee charged by the college's general counsel is the responsibility of the college. The involvement of the college's general counsel must be at the request of the college. CCMSI will not reimburse the college for fees and costs incurred by the college's staff attorneys or outside attorney's not assigned by CCMSI unless such costs are provided for under the applicable coverage. Coverage for any voluntary payments made by the college are subject to the insurance policy provisions addressing such payments.
6. **MMSEA SECTION 111 REPORTING** - New laws affecting all bodily injury claims mandate that CCMSI, on behalf of DMI, must obtain and report certain information including the Social Security number and

gender of each and every bodily injury claimant whether that claimant is Medicare eligible or not. In order to facilitate the collection and transmittal of this information to Medicare, CCMSI in conjunction with defense counsel must obtain this information from the claimant or the claimant's attorney prior to making any agreement to settle a bodily injury claim. No settlement payments will be generated without satisfying this reporting requirement so it is imperative upon all parties involved to obtain the information needed.

Further, if a claimant is a Medicare beneficiary as identified by the Medicare inquiry system, a comprehensive list of additional information regarding the claimant's injury, the claimant's attorney or parties representing the claimant, cause of injury and venue of litigation is needed to verify the Medicare lien amount related to that claim. Any payments owing Medicare will be made directly to Medicare and subtracted from the agreed upon settlement amount. Defense counsel is expected to be fully educated on this law and its effects with regard to claims handling and settlement. Provisions in settlement agreements shifting this responsibility to the claimant and his attorney will no longer relieve the carrier from legal liability for the non-payment of the Medicare lien. Further, attempts to improperly or unjustifiably re-categorize portions of a settlement as unrelated to bodily injury will be scrutinized by Medicare and expose the parties to costly challenges. Under the new law, DMI faces fines of \$1,000 per day per claimant for the failure to report information to Medicare. Therefore, satisfying this responsibility is critical.

D. Attorney Fees and Invoices

1. Billing for services rendered will be monthly from the date that the case was assigned to defense counsel.
2. All costs incurred should be itemized on the counsel's statement.
3. Attorney fees or fees for associates or paralegals must be consistent with the rates agreed upon by CCMSI and/or DMI.
4. Minimum amount of any statement for services rendered will be \$1,000 unless it is the final bill for the assignment.
5. Counsel is expected to obtain advance approval of significant expense items including travel expenses.
6. All statements must be itemized by date showing the activity completed and time spent. (Sample attached on page 11).
7. Attorney Fee Invoices – Attorney fees, court fees, witness fees and associated costs including any costs advanced by the firm (“Attorney

Fees”) shall be billed as part of the firm’s legal bill and sent to the CCMSI Adjuster/Claims Attorney for payment (\$1,000 minimum unless final bill).

Invoices for expert fees, will be paid directly by CCMSI after defense counsel has forwarded those invoices to CCMSI for direct payment. Be sure to obtain advance approval for other significant expense items.

8. Assigned counsel shall keep an accounting of the total billings under a particular file and report the cumulative amount in each invoice. A copy of the invoice is to be sent to CCMSI. Because various coverages offered to DMI policyholders are subject to self-insured retention amounts, the college will be billed directly by assigned counsel until the self-insured retention is exhausted. Once the self-insured retention is exhausted by payments made directly by the college to assigned counsel, the college shall notify assigned counsel to begin billing CCMSI directly starting with the first invoice that exceeds the retention layer.

For example: there is a \$100,000 retention and the college has paid \$98,000 in fees up to a certain date. If the next invoice is for \$5,000, that invoice shall be forwarded to CCMSI by the college for payment of the “excess of retention” amount. In the case above, the “excess of retention” amount is \$3,000.

Assigned counsel shall seek partial payment of that invoice from the college. From that point forward, assigned counsel may begin sending invoices directly to CCMSI. CCMSI or DMI has the right to audit the invoices on any file handled by assigned counsel to ensure proper exhaustion of the self-insured retention.

Attorney Invoices Sent To File Handler:

Please mail or email invoices for Attorney Fees to the CCMSI professional handling the file.

DEFEND & RESOLVE, P.C.

999 Lawyers Lane
 Madison, Wisconsin 53703
 (666) 555-4444
 Federal Tax ID #: 12-3456789
 Invoice Number QU-3333-005 JFK

January 15, 2009

CCMSI
 3333 Warrenville Road, Suite 550
 Lisle, IL 60532

Balance Forward	001 dated 9/30/08	\$ 323.50
Payment Received	(last payment 11/07/08)	<u>\$ 323.50</u>
Net Balance Forward		\$.00

TOTAL BILLINGS TO-DATE (Including This Invoice): \$3500.00

Your File: MPH-8888
 D/Loss: 01/01/06
 Insured: Clark Township
 Claimant: Baker, Clarence
 Our File: 123456
 Adjuster: SAL

Adjuster Initials or Name

FOR PROFESSIONAL SERVICE RENDERED

Professional Services	10/03/08	JFK	TELEPHONE WITH ATTY HARRIS	.10 hrs	50/hr	5.00
	10/12/08	JFK	LETTER TO JOHN SMITH	.30 hrs	50/hr	15.00
	10/15/08	XYZ	LEGAL RESEARCH, ZONING ISSUES	3.00 hrs	25/hr	75.00
	11/01/08	JFK	PREPARATION OF DEP NOTICE	.20 hrs	50/hr	10.00
	11/05/08	JFK	ATTENTION TO NOT OF DEP	.20 hrs	50/hr	10.00
	11/05/08	JFK	CORRESPONDENCE FROM PLF ATTY	.20 hrs	50/hr	10.00
	11/26/08	JFK	CONFERENCE WITH TOWNSHIP PERSONNEL	2.00 hrs	50/hr	100.00
	11/27/08	JFK	PREPARE DEPS OF NEWTON, CLEARY, THOMPSON	1.00 hrs	50/hr	50.00
	12//14/08	JFK	TELEPHONE WITH ATTY KELLER	.30 hrs	50/hr	10.00
	12/15/08	JFK	ATTENTION TO FILE	.20 hrs	50/hr	10.00
			Joe Francis Kosgrove	4.50 hrs	50/hr	225.00
			Xavier Yule Zyvon	3.00 hrs	25/hr	75.00
			TOTAL LEGAL FEES FOR THIS MATTER	10.00 hrs		300.00

File Expense Reimbursement

EXPENSE SUMMARY

11/06/08	Motion Fee (filed 11/6/08)	25.00
11/08/08	Witness Fee (Jane Eyewitness, deposition)	15.00
11/26/08	Parking	5.00
	TOTAL EXPENSES	45.00
	TOTAL LEGAL FEES	\$300.00
	TOTAL CHARGES FOR THIS BILL	\$ 345.00
	TOTAL BALANCE NOW DUE	\$ 345.00

PROPER RELATIONSHIP BETWEEN DEFENSE COUNSEL, CCMSI PERSONNEL, AND THE COLLEGE

- A. The defense attorney and CCMSI have the same interest in the eventual disposition of a file in litigation. In order to identify our common goals, it is important that lines of communication be open constantly among counsel, claims personnel, and the college.

- B. It is important that counsel is always in a position to exercise his/her independent judgment as an attorney on behalf of the college. Likewise, CCMSI personnel must exercise judgment to assure that the defense provided to the college is the best possible within the terms of the DMI policy or claims administration contract. Therefore, the following is our policy with regard to the relationship among counsel, CCMSI, and DMI:
 - 1. CCMSI personnel must provide counsel with all information developed in the investigation of the claim in a prompt and complete manner.
 - 2. Defense counsel must provide the CCMSI claim handler with reports, updates, and other required documentation in a timely manner.
 - 3. Assigned counsel must make every effort to transmit all internally generated documents including claim status reports, legal motions and briefs and other documents in electronic file formats such as Microsoft Word®, Adobe® PDF format, or Microsoft Excel®. This serves our initiative to maintain a paperless operation.
 - 4. Counsel will be advised of coverage disputes and coverage issues. However, assigned defense counsel will have no direct involvement on coverage matters. If necessary, separate counsel will be retained by CCMSI to discuss coverage and issue an opinion on coverage.

SUIT-STATUS REPORT

For use by defense attorneys in submitting a status report to CCMSI based upon present facts after the case has been in suit for **45** days and every **90** days thereafter. A separate report should be filled out for each plaintiff arising out of any one occurrence.

PLEASE GIVE SPECIFIC ANSWERS TO ALL QUESTIONS.

ADJUSTER: _____ PLAINTIFF(S): _____
CLAIM #: _____
DATE OF LOSS: _____ INSURED: _____

DISCOVERY CUT-OFF DATE: _____
DATE OF MEDIATION HEARING: _____
DATE OF FINAL SETTLEMENT CONFERENCE: _____
DEADLINE FOR FILING MOTIONS FOR SUMMARY DISPOSITION: _____
IS THIS CASE SET FOR TRIAL? YES NO (GIVE ESTIMATE)
TRIAL DATE: _____

1. WHAT MEMBER OF YOUR FIRM WILL TRY THIS CASE?

2. PROVIDE DETAIL ON LATEST DEVELOPMENTS IN THE CASE INCLUDING SIGNIFICANT DEPOSITION TESTIMONY AND ANY AMENDMENTS TO COMPLAINTS (MUST BE FORWARDED TO CCMSI CLAIMS FOR COVERAGE REVIEW)?

3. IN YOUR OPINION, IS THE INVESTIGATION OF THIS CASE COMPLETE? (YES/NO?) EXPLAIN.

4. WHAT IS PLAINTIFF'S CURRENT DEMAND? (COMMENT ON DEMAND HISTORY) \$

5. LIST AND DISCUSS THE STRENGTHS AND WEAKNESSES OF INSURED'S BEST DEFENSES TO LIABILITY (COMMENT ON POSSIBLE LIABILITY OF CO-DEFENDANTS, NON-PARTIES OR OTHER SOURCES AFFECTING PLAINTIFF'S ABILITY AND DEGREE OF RECOVERY AGAINST THE INSURED; EXAMPLE: COLLECTIBILITY FROM CO-DEFENDANT'S AUTO LIABILITY CARRIER) \$

6. WHAT DO YOU FEEL THE MAXIMUM VALUE OF THIS CASE IS, IF THERE WERE 100% LIABILITY? \$

7. WHAT IS YOUR OPINION OF OUR PERCENTAGE CHANCE OF LOSING?

8. DO YOU BELIEVE WE SHOULD SETTLE? EXPLAIN. YES NO

9. WHAT AMOUNT DO YOU RECOMMEND IN SETTLEMENT? \$ TO \$

10. WHAT IS YOUR EXPECTED FUTURE DEFENSE COST FROM CURRENT DATE FORWARD?

11. ANY OTHER SUGGESTIONS OR RECOMENDATIONS?

SIGNED: _____ DATE: _____

SETTLEMENT AUTHORITY

Under the terms of the claims administration agreement, CCMSI has the prerogative to settle claims up to a certain dollar amount dependent upon the type of claim. DMI must provide formal settlement authority beyond the stated limits found in the agreement.

In any matter where the DMI insurance policy requires the consent of the college before a settlement offer is made, a recommendation or concurrence by assigned counsel to the amount being offered will be deemed as an offer made with the college's consent.