



December 11, 2009

To: Excess Liability Members
 Offices of County and City Counsel,

From: Brad Reager, Excess Liability Claims Manager

Subject: Proposed Amendments to Addendum B – Liability Claims Administration Guidelines

At the November 19, 2009 meeting, the Executive Committee of the CSAC Excess Insurance Authority authorized the proposed amendments to Addendum B – Liability Claims Administration Guidelines to be circulated to the members and the County and City Counsels’ offices for review and comment. The Executive Committee directed staff to circulate the information so the members will have adequate opportunity to review the document before the Board considers final approval of the amendments at their March 5, 2010 meeting.

The Liability Claims Administration Guidelines were last amended in 2007. Prior amendments were made in 1999, 1995, and 1987. The Claims Review Committee reviews the document annually. Attached for your review are proposed changes in redline/strikeout text. The document has been reviewed by the Claims Review and Executive Committees.

Many of the proposed changes are to clean up the document. However, below is a list of the additional substantive changes:

- Addition of the Claim Reporting Guidelines which were added to the 2009/2010 GLI and GLII MOCs as Universal Endorsements.
- A requirement that a claimant’s Medicare eligibility be verified and documented in every file. In cases where the claimant does meet the eligibility requirements, mandatory reporting to the Center for Medicare and Medicaid Services must be completed in compliance with the State Children’s Health Insurance Program Section 111.
- In a number of locations the word “should” was changed to “shall”.

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EXECUTIVE COMMITTEE:

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The review and comment period by the members and County Counsels will end on Friday, February 26, 2010. We will incorporate suggestions received, if any, and present final amendments for consideration by the Board of Directors at the March 5, 2010, meeting, after review by the Claims Review Committee and the Executive Committee. Although we will accept all comments up to the February 26th deadline, please provide all feedback you may have as soon as possible to allow sufficient time to prepare the information for the March 5th meeting.

If you have any questions, please feel free to contact me at (916) 631-7363 or breager@csac-eia.org.

Enclosures

cc: Alliant Insurance Services





Adopted: December 6, 1985
Amended: January 23, 1987
Amended: October 6, 1995
Amended: October 1, 1999
Amended: March 2, 2007

**ADDENDUM B
LIABILITY
CLAIMS ADMINISTRATION GUIDELINES**

The following Guidelines have been adopted by the CSAC Excess Insurance Authority (hereinafter the Authority ~~or the EIA~~) in accordance with Article 18(b) of the CSAC Excess Insurance Authority Joint Powers Agreement.

I. CLAIMS INVESTIGATION

- A. Complete ~~F~~ factual investigation ~~should~~shall be ~~completed~~done within forty-five (45) days of Member's knowledge of claim, including statements from participants and witnesses, appropriate official reports, and photos. (Answer questions who, what, where, when and why).
- B. Develop liability issues, including immunities, comparative negligence, joint tort feasons and joint and several liability. Transfer of risk is an important aspect of any claims investigation.
- C. Initiate ~~Begin to develop~~ the development of information on damages:
1. Property damage
 2. Nature and extent of injuries
 3. Medical costs
 4. Lost wages
 5. Dependency
 6. Other damages
- D. Obtain and review contracts that may be in effect relating to specific accidents, to determine whether there is any sharing or complete transfer of the risk.
1. Hold-harmless indemnity agreements
 2. Additional insured requirements
- E. Obtain defective products and/or other evidence, and hold it if at all possible, or at least locate where it is being held. Obtain product information for the file. Early preservation of evidence is imperative for a proper defense.

- F. Utilize experts appropriately on cases. Consideration ~~should~~shall be given to structured settlements and Voluntary Settlement Conferences. ~~EIA-The Authority~~ has a resource manual with the names, addresses, etc. on various experts who can be retained to investigate and testify on behalf of the Members.
- G. Report all bodily injury claims to the Index Bureau. ~~The EIA maintains membership in the Index Bureau.~~
1. The Authority maintains membership in the Index Bureau that members can access. ~~Report all bodily injury claims to the Index Bureau.~~
 2. Follow up on Index Bureau information by sending the Inquiry Form to insurance companies reporting other injuries to the claimant. Do not hesitate to call and discuss the losses with other adjusters.

Claims are reported via the internet. An instruction manual may be obtained online at Claimsearch.iso.com, after being registered for use by the ~~EIA~~.
Authority

- H. Arrange appraisals for damaged property. Do not rely on the appraisal obtained by the plaintiffs' own carriers. In some instances they may not utilize the local A.C.V. and the "computerized" appraisal figure can be inflated.

II. EXCESS REPORTING REQUIREMENTS

A. First Report

In the event of an **occurrence** or a **wrongful act** reasonably likely to involve the Authority, written notice containing particulars sufficient to identify the **covered party** and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, ~~should~~shall be given by or for the **covered party** to the Authority or any of its authorized agents as soon as practicable, after the individual responsible for the coverage at the Member, or his/her designee, has knowledge of the **occurrence** or **wrongful act**.

Utilize the current First Report Potential Excess Liability Claims form ~~currently~~ in use, available through the ~~EIA~~ Authority website, and transmit to the Authority.

The Member must also give the Authority immediate written notice for any claims or suits which the Member becomes aware of that include injury of the following types:

- a. Death
- b. Paralysis, paraplegia, quadriplegia
- c. Loss of eye(s), or limbs
- d. Spinal cord or brain injury
- e. Dismemberment or amputation
- f. Sensory organ or nerve injury or neurological deficit
- g. Serious burns
- h. Severe scarring
- i. Sexual assault or battery including but not limited to rape, molestation or sexual abuse
- j. Substantial disability or disfigurement
- k. Any class action
- l. Any claim with trial within nine (9) months and demand of \$1 million or more
- m. Any **occurrence** or **wrongful act** with total incurred (combination of paid and outstanding reserves) at or above the lesser of \$500,000 or 50% of the Member's Retained Limit

B. Update Reports

The ~~EIA Authority should~~shall be provided copies of periodic reports (at least every 90 days) in order to be kept apprised of the developments of the case. On litigated cases, defense counsel ~~should~~shall also include the ~~EIA Authority~~on their mailing lists for copies of correspondence, reports, evaluations, interrogatory summaries, deposition summaries and medical summaries. Actual deposition transcripts, interrogatories, their answers to interrogatories and interim billings are not required.

As reserve/update changes occur, complete and transmit the current Reserve and Payment Update form available through the ~~EIA Authority~~website.

C. Closure Reports

When a case that has been reported to the ~~EIA Authority~~is settled, dismissed or closed in any other fashion, provide the EIA Authority with the closing documents and a completed current Closure Information form currently in use, available through the ~~EIA Authority~~website.

III. TORT CLAIM REQUIREMENTS/GOVERNMENT CODE

- A. All notices (pertaining to claim insufficiency, returning late claims, claims rejections, etc.) ~~should~~shall be timely done in accordance with the relevant Governmental Code provisions.
- B. Appropriate Dismissal Motions ~~should~~shall be made for failure to meet the applicable Code of Civil Procedure statutes for timely serving, conducting discovery or bringing a complaint to trial.
- C. Proper verification of a claimant's status as to Medicare eligibility shall be completed and documented in every file. In those cases where the claimant does meet the eligibility requirements, mandatory reporting to the Center for Medicare and Medicaid Services (CMS) must be completed directly or through a reporting agent in compliance with State Children's Health Insurance Program (SCHIP) Section 111.

IV. DOCUMENTATION

- A. Accurate reserves ~~should~~shall be established based on facts known, within thirty (30) days of receipt of the investigative report. Legal and adjusting expenses ~~should~~shall be included. The following formula is recommended in establishing and updating the reserves for each file:

- 1. $(\text{Maximum Value} \times \text{Member's \% of Liability}) + \text{Expense Factor} = \text{Reserve}.$

Maximum value is the potential total amount a plaintiff could expect to receive, either through settlement or verdict, as if he/she was completely free of negligence. Maximum value ~~should~~shall include any potential award of plaintiff's attorney fees, such as, but not limited to, cases involving Federal Civil Rights.

Percentage of liability is determined by various factors that are discovered during an investigation. Reserves ~~should~~shall be adjusted accordingly, as facts are developed, to properly reflect the exposure. These factors include but are not limited to:

- a. The extent of plaintiff's liability
- b. The number of co-defendants and their percentage of liability
- c. The ability of the co-defendants to respond financially to any settlement or verdict.
- d. On cases occurring after June 3, 1986, Proposition 51 allows defendants to limit their liability on non-economic damages to their percentage of fault.
- e. On cases involving uninsured claimants the recovery is limited to economic damages in accordance with California Code of Civil Procedures sections 3333.3 and 3333.4 (Prop 213).

2. The reserve ~~should~~shall be set at the full exposure after applying the above formula, even if it exceeds the Member's Self-Insured Retention.
- B. The file ~~should~~shall contain reports necessary to document the decisions made, including all demands, offers of settlement and settlement authority.
1. A complete "typed" captioned report ~~should~~shall be placed in each file for:
 - a. Bodily Injury claims reserved above 25% of the S.I.R.
 - b. Property Damage claims reserved above 25% of the S.I.R.
 - c. All claims that meet the ~~EIA~~ Authority's excess reporting requirements regardless of reserves.

Members and/or claims administrators may follow stricter guidelines.

The captioned report ~~should~~shall include the following topical headings and subsequent entries:

1. Date of report
2. Member name
3. S.I.R level
4. Claimant(s) Information
5. Date of Loss
6. Claim Number (if used)
7. Facts of accident or occurrence
8. Witness/Participant Statement
9. Suggested reserves (see IV. A) Do they reflect exposure?
10. Assessment of liability
11. Review of damages/injuries, including medical costs, lost wages, dependency, property damage estimates, total loss evaluations, loss of use claims, and other damages
12. Index Bureau reporting
13. Addressing of coverage questions
14. Excess potential
15. Structured Settlement possibilities
16. Voluntary Settlement Conference potential
17. Subrogation potential
18. Governmental Code compliance and immunities
19. Identify future course of action
20. State next diary date
21. If litigated, identify counsel on both sides.
22. Offsets or liens that may need to be considered.
23. Medicare eligibility and reporting

- C. Photos, diagrams, estimates, statements, plans, contracts, medical, law enforcement and coroner's reports (where applicable) ~~should~~shall be in the claims file in a timely manner.

V. CASE SETTLEMENT FACTORS

- A. The settlement ~~should~~shall be reasonable in light of damages, injuries, ~~and~~ liability, and any obligations to Medicare.
- B. Settlements ~~should~~shall be effected in a timely manner, with consideration given to structures and/or voluntary settlement conferences.
- C. Contributions from joint tort feasons ~~should~~shall be considered.
- D. Settlement evaluation and authority ~~should~~shall be documented. On cases exceeding the S.I.R., prior written authority must be obtained from the ~~EIA~~ Authority.
- E. Proper releases and dismissals ~~should~~shall be secured.

VI. LITIGATED FILES

- A. Defense plan ~~should~~shall be in the file, including a projected cost analysis.
- B. Defense attorney evaluation ~~should~~shall be completed and in the file within sixty (60) days of assignment.
- C. The defense attorney ~~should~~shall make proper follow-up requests for investigation.
- D. Defense costs ~~should~~shall be controlled by the Member. Depositions and other defense costs ~~should~~shall be approved by the Member.
- E. There ~~should~~shall be timely recommendations from defense firms regarding settlements and trial preparation.
- F. Litigation outcome and total costs ~~should~~shall be documented.
- G. There ~~should~~shall be timely notification to relevant employees and other parties regarding pending litigation.

VII. SUMMARY

The file ~~should~~shall be completely documented. Audits conducted by the ~~EIA~~Authority Auditor ~~not only utilize industry standards, but also these guidelines~~shall measure whether performance is consistent with these guidelines.

~~The California Unfair Claims Settlement Practices Regulations went into effect on January 15, 1993. These regulations apply to the Insurance Industry as a whole. Public Agencies (including J.P.A.'s) are not governed by these regulations. Many Members utilize outside claims administrators that must comply with these regulations in their private insurance industry work, and have already had their adjusters certified.~~