

Endurance Defense Counsel Guidelines

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Endurance Objectives

The goal of Endurance is to ensure that the legal services received by its insureds are of the highest quality and are provided in a timely, efficient, and cost-effective manner.

The policies and procedures contained in these Guidelines outline the terms of your engagement as defense counsel. Our initial contact will apprise you of our defense objectives, fee arrangements, Endurance and insured liaison contacts, and any special handling requirements. We will expect each party to keep the other apprised of significant developments in addition to the communications requirements discussed herein.

Endurance also expects that counsel will immediately notify us whenever it appears the cost of defense will be disproportionate to the size or the importance of the case or if total fees are likely to exceed reasonable expectations.

Endurance values its relationship with defense counsel and encourages counsel to communicate candidly about methods and strategies to improve service and reduce costs for our mutual clients. We believe in the team approach to the management of litigation and hope our relationship with defense counsel will be a lasting one.

Litigation in which Endurance is a Party

The claims handler must be notified immediately if an Endurance company becomes a party to litigation. Copies of all pleadings in such actions should be sent to Richard M. Appel, Senior Vice President, Senior Counsel at 750 Third Avenue, New York, New York 10017; Phone: 212-209-6508; Fax: 212-209-6501; E-Mail: rappel@enduranceservices.com. Mr. Appel should also be advised immediately whenever the issue of Endurance witnesses arises.

Conflicts of Interest

In most cases, Endurance appoints counsel to represent its insured in litigated matters. Although Endurance appoints counsel and pays counsel's fees (per the terms of the applicable policy) for such legal representation, Endurance recognizes that the insured, Endurance, and defense counsel are bound in a tripartite relationship with each party owing one another duties and obligations peculiar to their respective positions, the foremost of which is the attorney - client relationship between the insured and counsel. Defense counsel, upon receipt of an assignment, is expected to investigate, identify, and disclose any such potential or actual conflict of interest that exists or may occur as to counsel, the insured, and Endurance.

Should an actual or potential conflict of interest be identified, counsel must immediately provide both the insured and Endurance with written notification stating the facts giving rise to the conflict. Should both the Endurance insured and Endurance agree to a written waiver of the conflict or potential conflict, counsel may continue with the defense. Otherwise, Endurance will provide for other representation for its insured.

Staffing

Cases will be assigned directly to specific counsel. The attorney selected will be primarily responsible for all aspects of case management, including implementation of the litigation strategy, delegation within the law firm, and cost-effective handling of the litigation. Each case should be staffed with no more than three individuals: the lead attorney, an associate, and a paralegal (if paralegal activities will enhance efficiency and cost-effectiveness). We will not pay for activities that we consider clerical or overhead, which include but are not limited to:

- Preparing, reviewing and/or following up on firm or vendor invoices
- Preparing auditor responses
- Reviewing or analyzing conflict issues
- Attending seminars or continuing education programs
- Reviewing advance sheets or other publications to stay abreast of the law
- Intra-law firm communication
- Time attributable to firm management factors such as supervisory file review, training time duplication of other staffing inefficiencies attributable to the departure/unavailability of firm personnel or general staffing changes
- Research, pleadings, discovery demands and work prepared for other files
- More than .1 hour for reviewing pre-printed or computer-generated forms, documents, pleadings, notices, discovery, etc.
- Individual charges for the same or similar documents sent to multiple parties (e.g., deposition notices)
- Proofreading, editing mistakes, reworking, redrafting, and/or textual changes (editing or revision time is billable only to add newly obtained information, or if requested by Endurance)
- Preparation of bills and invoices
- Routine file reviews
- Calendaring

Only one member of the defense team may attend depositions, court appearances, meetings, etc., unless prior approval from the claims handler has been received. Trial staffing must also be discussed with and pre-approved by the claims handler.

Paralegal Services/ Clerical

Utilization of paralegal services can be cost-effective, and Endurance encourages their use for services, which are commensurate with their training, education, and experience. Common paralegal functions include, but are not limited to all activities associated with ordering records, reviewing and summarizing records, and page line deposition summaries when pre-approved. The time of secretaries, clerks, managing clerks, summer associates, librarians, and messengers for tasks such as photocopying, filing, delivering materials to court or opposing counsel, scheduling, arranging for deposition reporting, opening/closing files, preparing service/filing letters, cataloging, chronologizing, word processing, making travel arrangements, document stamping, faxing, collating, velobinding, document organizing, and retrieving documents from file is not billable.

Litigation Strategy/ Defense Plan

During the first 60 days following case assignment, defense counsel will consult with the assigned claims handler to develop an agreed upon litigation strategy.

A written Legal Defense Strategy Plan is required within 60 days of assignment, and shall include (1) the scope of legal work, (2) strategies to be pursued, (3) staffing required by defense counsel, (4) total estimated legal fees associated with defense activities, (5) estimated settlement value and verdict value, and (6) the advisability of alternative dispute resolution. A budget is also required, and must be updated every six months and 30 days prior to trial.

At least 30 days prior to a mediation or settlement conference, an evaluation (not to exceed three (3) pages), discussing overall case value, settlement value, our insured's potential liability, defense counsel's recommendation for settlement and the authority sought must be provided. An updated budget must be included with this evaluation.

Case Disposition

Endurance seeks to minimize litigation and related expenses. The use of alternative dispute resolution is encouraged if settlement negotiations are unsuccessful. No settlement discussions are to occur without Endurance's express prior approval. We expect counsel to work toward cost-effective resolution. Defense counsel must obtain in writing from the Insured a consent to settle and must convey that consent to the claims handler at the outset of the representation if possible, or as soon thereafter as is reasonable but in every case at least 30 days prior to any mediation or settlement conference.

Fees & Defense Counsel Evaluation

Endurance will only pay the pre-approved hourly rate or alternative fee arrangements. Rate increases will be approved only if agreed upon by Endurance in advance and in writing and will apply to new assignments only.

Communication

Timely and effective communications between defense counsel, insureds, and Endurance are essential. Endurance encourages telephone discussions between counsel, insureds, and its representatives for quick, cost-effective discussions of status and activities.

The following communications guidelines should be followed on all cases:

- Written acknowledgment of assignment of cases within two (2) days
- Prepare a Litigation Defense Strategy Plan and Budget within 60 days of assignment
- Discuss with the claims handler any additional investigation which becomes necessary and by whom it will be performed

- Immediately report all settlement demands
- Notify Endurance as soon as a trial, mediation, arbitration or other significant settlement negotiation dates are scheduled
- Provide ample lead-time to Endurance and its insureds when submitting interrogatories for completion
- Provide a case status update every 90 days until closure. These status updates should be brief and sent via email only. Report all discovery undertaken on a periodic basis. Endurance will request complete copies of discovery documents on an as needed basis
- Submit a comprehensive report, including evaluation, at least 60 days prior to trial or arbitration
- Any request for settlement authority must be made on a timely basis. Requests for authority or participation in any mediation or settlement conference at the last minute will not be tolerated
- All written communications to Endurance shall be via e-mail only and should include the Endurance claim number and name of the insured

Legal Research

Endurance expects that counsel will be experienced and familiar with the legal issues of most cases. From time to time, some research will be necessary. This research must be performed by the associate assigned to the file. Consult with Endurance for research authority in excess of three (3) hours. Please document this on the bill with the name of the person who authorized.

We do not require a formalized memorandum discussing the results of legal research, if one is prepared please send a copy to the claims handler. Research on fundamental matters such as local rules of practice or basic issues of law is not billable. Fees for Westlaw, Lexis or similar on-line legal research services are not billable.

Discovery

Discovery and motion practice must be cost-effective. Endurance is sensitive to unnecessary discovery and its cost. Whenever possible, defense counsel should handle discovery informally, including production of documents, arranging for depositions and handling discovery disputes. Common paralegal functions include, but are not limited to preparing form discovery demands and responses. Other, more case-specific discovery may be handled by an associate. Discovery motions should be filed as a last resort and must be preapproved by the claims handler.

Only one attorney may attend a deposition, witness meeting, court appearance, etc. Preapproval by the claims handler is necessary if additional legal staff is required and before taking or attending the deposition of any individual other than the parties to the action or experts. A deposition report, of no more than three (3) pages, should include impressions of the witness, summary of the relevant testimony, and impact of the testimony on the insured's potential liability and damages. Do not prepare a line-by-line summary. Digesting (page/line summaries) of depositions requires preapproval by the claims handler and is solely a paralegal function.

The projected cost of discovery should be discussed with the Endurance claims handler upon initial assignment and at appropriate times during the life of the litigation. Staffing and expenses, including retention of third-party vendors, anticipated from electronic discovery obligations and large document projects must be discussed in advanced and preapproved by the claims handler.

Alternative Defense Arrangements

While most legal services will be contracted on an hourly fee basis, Endurance will consider alternatives such as flat fees and incentive/value billing plans, when appropriate as they can result in economies and efficiencies for law firms, Endurance, and its insureds.

Auditing

Endurance reserves the right to conduct periodic audits of file(s) handled on behalf of Endurance or its insureds. The purpose of the audit is to evaluate the quality of legal services provided, adherence to handling and billing requirements, case management, cost-effectiveness, and overall results. The audits may be conducted by Endurance or others retained on Endurance's behalf. The audit will take place at counsel's premises (unless otherwise requested by Endurance) at a mutually acceptable time and date.

By accepting assignment of Endurance business, the law firm agrees to cooperate with the auditors and will make available the senior attorney responsible for the file(s), other personnel as requested, complete access to the file(s), and all pertinent billing information, time slips, document records and/or reports as requested. The outcome of the audit will be discussed between Endurance and the managing partner and/or the senior attorney selected to handle the Endurance account.

Media Relations

Endurance is interested in protecting the privacy and confidentiality of its insureds. Counsel is not authorized to make any public comments, issue statements or press releases in connection with any matter being handled for Endurance or an Endurance insured. Any exceptions must be authorized by Endurance. If you are contacted by the media, please advise the claims handler immediately.

Submission of Billing Invoices and Legal Budgets

Bottomline Technologies is our legal expense management partner. All invoices should be submitted to Bottomline, in accordance with their instructions, on a quarterly cycle from the date your firm was assigned the file, unless other arrangements have been approved. Each entry on the invoice must be appropriately coded using the Uniform Task-Based Management System codes as approved by the American Bar Association. Failure to provide UTBMS codes for each entry will result in rejection of the bill. Invoices submitted for payment must be received by Bottomline within forty-five (45) days of the close of the billing period. Final invoices must be submitted for payment within thirty (30) days of conclusion of the case.

All legal budgets required by these guidelines must also be submitted through Bottomline. Instructions for submission will be provided. Invoices submitted for payment that are at or above the approved budget will be rejected until a revised budget is submitted and approved.

Appealing Deductions Taken on Invoices

If you would like to request reconsideration of any deductions taken on your invoices, please be aware that there is an appeal process. Endurance has defined a forty-five (45) day appeal period (from the date the Bill Analysis Report was released) within which you may submit an appeal of any of the reductions. Appeals are to be submitted electronically.

Activities Not Requiring Consultation with Endurance

The following activities may be undertaken without consultation.

- Initial review of Complaint, or Petition
- Review of substantive court orders
- Initial draft of Answer/Notice of Appearance/Demand for Jury Trial
- Correspondence essential to the litigation. Examples are correspondence related to pleadings, negotiations, settlement discussions, strategy, and evaluations
- Telephone conferences
- Preparation of key witnesses
- Review of expert reports
- Review of medical reports
- Post-deposition summary and reporting of pre-approved depositions
- Preparation of non-discovery motions/briefs not exceeding three (3) hours
- Case/litigation reports to Endurance
- Settlement conference statements
- Court appearances
- Trial preparation and attendance
- Preparation of non-standard releases
- Conferences between counsel and Endurance
- In-firm communications (oral or written) that are instructional, educational, informational, administrative or supervisory in nature are not billable. Entries for substantive communications that demonstrate the independent contribution of the participant(s) and provide sufficient detail of the subject of the communication to demonstrate its relevance and value are only billable between attorneys. Only the conference time of the handling attorney or the highest ranked attorney will be reimbursed

Activities/ Disbursements Requiring Consultation with Endurance

Consultation with the Endurance claim handler is required before the following activities are undertaken. Invoices should document with whom consulted.

- Attendance at mediations and/or arbitrations
- Legal research exceeding three (3) hours
- All discovery motions and other motions and briefs exceeding three (3) hours
- More than one attendee at a trial, hearing, court appearance, arbitration, mediation, deposition, third party conference call, or any similar event
- All expenses over \$5,000, including experts and other vendors

Defense Counsel Business Overhead

Like any business enterprise, law firms incur overhead expenses. Endurance considers such expenses as included in the hourly rates established by the law firm and not billable as professional services. Non-billable fees include:

- Preparing, reviewing and/or following up on firm or vendor invoices
- Preparing auditor responses
- Reviewing or analyzing conflict issues
- Attending seminars or continuing education
- Reviewing advance sheets or other publications to stay abreast of the law
- Time attributable to firm management factors such as supervisory file review, training time, and duplication of other staffing inefficiencies attributable to the departure/unavailability of firm personnel or other staffing changes
- Research, pleadings, discovery demands and work prepared for other files
- More than .1 hour for reviewing pre-printed or computer-generated forms, documents, pleadings, notices, discovery, etc.;
- Individual charges for the same or similar documents sent to multiple parties (e.g., deposition notices)
- Proofreading, editing, mistakes, reworking, redrafting, and/or textual changes. (editing or revision time is billable only to add newly obtained information, or if requested by Endurance)
- Preparation of bills and invoices
- Routine file reviews
- Calendaring
- Outside overnight/express/messenger delivery services unless required for a reason not caused by the firm (e. g. the firm's delay in preparing or filing papers is not justification). Justification must appear on or with the invoice as well as the claim handler's approval
- Charges for attempted phone calls or leaving or retrieving messages
- Case management, litigation, computerized support and/or document control systems
- Computerized legal research hardware or software costs
- Overtime and associated expenses - meals, transportation or other charges
- Office supplies
- Local phone charges
- Faxes
- Postage

Billing Format

Each billing statement should be personally reviewed by the senior or lead attorney to ensure that all time charged reasonably reflects the value of the work performed, that all costs and disbursements were reasonable and necessary, and that the billing format is properly followed. Failure to follow these guidelines and adequately describe professional services will delay invoice processing and payment. Block billing is not permitted.

The following information must appear in each invoice:

General Information

- Firm's address and FEIN number
- Name of the matter
- Endurance claim number
- Date of loss
- Insured's name
- Claimant's name
- Jurisdiction in which the suit is venued

Staff Member Information

The invoice must also include a list of all timekeepers who billed time to each file during the bill period, including:

- Full names
- Initials or other identifiers used to identify them in the time records
- Ranks (e.g., partner, associate, paralegal)
- Hourly rate and, if the hourly rate for any timekeeper changed during the billing period, the change date(s)
- Unique identification number assigned by the firm

Fee-Related Information

Each invoice must contain the following fee-related information:

- One-Hour Increments – billing in .1-hour increments (except for activities taking less than .1 hour that should be grouped with others to accurately reflect the time spent)
- Single-Activity Entries – a detailed description of each task performed in single- activity time entry, including the date it was performed, who performed it, their rate, the time expended and the charge

Adequate Descriptions

Each activity must be described adequately so that a person unfamiliar with the case may determine what activity is being performed. Adequate descriptions include, but are not limited to:

- Specific purpose for summarizing documents
- For communications (e.g., telephone calls, correspondence, meetings), the identity of participant(s) and the topic(s) discussed
- Purpose of the court hearing/conference and who attended
- Identity of each deponent/interviewee
- Purpose of review of deposition or trial transcripts
- The specific issue researched
- Specific non-deposition discovery worked on and the nature of the work performed
- Specific trial preparation performed
- Specific motion worked on and the nature of the work performed
- Identity of the material or documents reviewed, including the scope and purpose with volume reviewed, i.e. bates numbers. Please give as much detail as possible.
- For travel time, the time spent traveling, the purpose and destination

Inadequate Descriptions

Examples of inadequate descriptions include but are not limited to:

- Attention to matter
- Letter or telephone call re status
- Preview of file, case or issues
- Arrangements
- Trial preparation
- Research
- Work on discovery
- Update status or strategy
- Work on file or case
- Prepare for meeting
- Prepare for deposition (without discussion of specific preparation undertaken)
- Receive/review documents
- Analysis
- Preparation of materials

Disbursement - Related Information

Each invoice also must include a summary itemizing the total billed for each type of disbursement, travel expenses, filing fees, etc.

Cost Advances

Costs and expenses for experts, consultants, court reporters, etc. in excess of \$1000 may be billed directly to Endurance. All other costs and expenses should be paid by the law firm and reimbursement sought. Endurance will not reimburse counsel for penalties or interest charges due to late payment of vendor invoices.

Consultation Notation

For fee activity and disbursements that require consultation under Endurance's guidelines, the source of that consultation must be noted in or with the invoice.

Travel Time & Expenses

Travel time must be itemized separately, including the time spent, destination and purpose of the trip. Travel time is billable at counsel's full hourly rate. Endurance will pay for travel time, or for actual work done during that time but not both.

Expenses for preapproved travel must be reasonable and necessary and are reimbursable provided that:

- Each expense is separately identified with an amount and date incurred
- Mileage does not exceed the current IRS rate
- Hotel accommodations are moderately priced based upon the city
- Meals are only billable in connection with overnight travel and are limited to \$100 per day
- Taxis or shuttles are used rather than rental cars wherever cost-effective
- Rental cars are no larger than intermediate class, insurance coverage is not charged to Endurance
- Coach or economy airfare on a non-refundable ticket (unless flying through three time zones, then business class is allowed) and, whenever possible, is reserved sufficiently in advance and with an appropriate carrier, so as to secure the lowest rate under reasonable circumstances

Reimbursable office expenses include:

- Copying/scanning at a maximum of \$.10 per page
- Long distance telephone charges

Receipts must be supplied for expenses greater than \$50.00. Vendors' receipts (including hotel bills and tickets) must be supplied. Endurance will pay only the actual cost for expenses (without premiums or mark-ups).