

Liability Program

CLAIMS ADMINISTRATOR REQUIREMENTS

I. DEFINITIONS

Primary Claims Adjuster, sometimes referred to as the “underlying” adjuster, shall mean the person or firm employed or contracted by the Member who manages claims within the member’s self-insured retention.

Pool Claims Adjuster shall mean the person or firm who is employed or contracted by PARSAC to manage claims that are covered by PARSAC. For those members with \$5,000 or \$10,000 SIRs, the Pool Claims Adjuster shall also serve as Primary and shall comply with the requirements of both positions.

Litigation Manager shall mean the person or firm who is employed or contracted by PARSAC who manages all litigated cases and provides oversight on all claims and serious incidents that have potential for litigation.

Self-Insured Retention (SIR) shall mean the amount of each loss which the Member shall retain and pay directly. No portion of the fees paid by the Member to the Primary Claims Adjuster shall be applied to reduce their SIR obligation.

II. CASE LOAD

- A. Claims Adjusters shall have a caseload not to exceed one hundred and fifty (150) open files, of which no more than 1/3 are in active litigation. The manager/supervisor shall have a caseload not to exceed fifty (50) open files.
- B. Managers/Supervisors shall meet with the member and/or PARSAC not less than semi- annually to complete a file review of all open claims.

III. EXPERIENCE

- A. Claims Adjusters shall have a minimum of five years experience adjusting liability claims for public entities and shall receive training annually toward professional designations.
- B. Managers/Supervisors shall have at least 10 years experience adjusting liability claims, five of which involve adjusting liability claims and managing litigated files for public entities.

Liability Program

CLAIMS ADMINISTRATOR REQUIREMENTS

IV. CLAIMS INVESTIGATION

A. The ***Primary Claims Adjuster*** shall:

1. Complete a factual investigation within thirty (30) days of the member's knowledge of the claim or critical incident to obtain statements from claimants and witnesses, appropriate official reports, and photos (answer questions who, what, where, when and why).
2. Identify liability and potential defenses, including use of governmental immunities, comparative negligence, joint tort feorsors and joint and several liability.
3. Begin to develop information on damages including, but not limited to:
 - Property damage;
 - Nature and extent of injuries;
 - Medical costs;
 - Lost wages;
 - Dependency; and/or
 - Other damages.
4. Obtain and review contracts that may be in effect relating to the claim and determine whether there is potential for transferring risk via any of the following methods:
 - Hold-harmless indemnity agreements;
 - Additional insured requirements; and/or
 - Certificate of Insurance, Additional Insured Endorsements.
5. Obtain and secure defective products and/or other evidence. Obtain product information for the file. Early preservation of evidence is imperative for a successful defense, tender or products liability claim.
6. Report all bodily injury claims to the Index Bureau and follow up on Index Bureau information by sending the Inquiry Form to insurance companies who have reported other injuries to the claimant. Do not hesitate to call and discuss the losses with other adjusters.

Liability Program

CLAIMS ADMINISTRATOR REQUIREMENTS

7. Arrange appraisals for damaged property. Do not rely on the appraisal obtained by the claimant/plaintiff. In some instances, they may not utilize the local A.C.V. and the "computerized" appraisal figure can be inflated.
8. Make a recommendation to the member and/or PARSAC once the investigation is complete. All notices pertaining to claim insufficiency, returning late claims, claim rejections, etc. shall be timely and in accordance with the relevant Governmental Code provisions.

If it is determined that the member is liable, work with the Risk Manager, claimant, and/or PARSAC to attempt a resolution of the claim as quickly as possible. When negotiating a settlement, the following guidelines should be followed:

- The settlement should be reasonable in light of damages, injuries and liability.
 - Settlements should be effected in a timely manner, with consideration given to structures and/or voluntary settlement conferences and/or non-monetary resolutions.
 - Contributions from joint tort feasons should be considered.
 - Settlement evaluation and authority shall be documented. On cases exceeding the member's SIR, prior written authority must be obtained from PARSAC.
 - Proper releases and dismissals shall be secured.
9. Based on the results of the investigation, establish appropriate file reserves not to exceed the Member's SIR. If a higher reserve is necessary, immediately transfer the claim to the **Pool Claims Adjuster**. Refer to Section VII – Documentation for the recommended calculation formula.
 10. As soon as the exposure has been properly documented for the file, advise the member to correct, mitigate, or eliminate further exposure, where possible (i.e. repair cracked sidewalk, remove tree hazard, etc.).

V. REPORTING REQUIREMENTS

A. The ***Primary Claims Adjuster*** shall:

1. Immediately report to PARSAC all occurrences reasonably likely to be covered by PARSAC, including but not limited to:

Liability Program

CLAIMS ADMINISTRATOR REQUIREMENTS

- One or more fatalities;
 - Loss of a limb;
 - Loss of use of any sensory organ;
 - Quadriplegia or paraplegia;
 - Third degree burns involving more than 10% of the body;
 - Serious facial disfigurement;
 - Long term hospitalization;
 - Closed head injury; and/or
 - Serious loss of use of any body function.
2. Report ALL LAWSUITS within 5 days of first receipt of service on the member or any employee of the entity.
 3. Report all claims likely to exceed 50% of the member's self-insured retention to the ***Pool Claim Adjuster*** within 15 days.
 4. Report all critical incidents involving law enforcement such as, but not limited to, shootings, civil rights violations, vehicular pursuits, multiple claimants, etc. immediately to PARSAC and the ***Litigation Manager***.
 5. Review files every forty-five (45) days, or as new information develops, evaluate reserves, adjust and provide report to the Member and the ***Pool Claims Adjuster***.
- B. The ***Pool Claims Adjuster*** shall:
1. Perform administrative tasks including, but not limited to:
 - Receive and route file correspondence.
 - Make claim payments and provide account reconciliation.
 - Maintain claims database and provide monthly loss reports according to Section VII below.
 - Document all claim files according to Section VII below.
 - Conduct quarterly file reviews and provide status reports to PARSAC and the Litigation Manager.
 - Monitor files handled by the Primary Claims Adjuster including reviewing status reports and investigation to ensure the file is transferred to PARSAC when appropriate.

Liability Program

CLAIMS ADMINISTRATOR REQUIREMENTS

2. Report to PARSAC's excess carrier in accordance with the excess reporting requirements.
3. Provide PARSAC with a closing report once a claim has been settled, dismissed or closed in any other fashion.

VI. LITIGATED FILES

All litigated files shall be assigned defense counsel in accordance with PARSAC's Defense Panel Resolution.

A. The **Primary Claims Adjuster** shall:

1. Report all litigation to PARSAC and/or its **Litigation Manager** within 5 days of service on the Member, in accordance with **Section IV** above.
2. The **Primary Claims Adjuster** shall **NOT** assign defense counsel. Whenever possible, PARSAC and the **Litigation Manager** shall consult with the Member prior to making an assignment.
3. Attend mediation, arbitration, and settlement conferences as requested by PARSAC and/or its **Litigation Manager**.

B. The **Pool Claims Adjuster** shall:

1. Upon assignment of defense counsel, send a Letter of Engagement to counsel that includes PARSAC's Litigation Management Guidelines.
2. Conduct additional investigation or tasks necessary as directed by the **Litigation Manager**.
3. Attend mediation, arbitration, and settlement conferences as requested by PARSAC and/or its **Litigation Manager**.

C. The **Litigation Manager** shall:

1. Within 45 days following assignment, ensure defense counsel has submitted a preliminary evaluation of the lawsuit including a litigation plan and budget.

Liability Program

CLAIMS ADMINISTRATOR REQUIREMENTS

2. Ensure defense counsel submits status reports every 90 days to include new developments only. Routine submission of repetitive, non-substantive status reports is not acceptable.
3. Coordinate with defense counsel to properly follow up on investigation/discovery requests, obtaining expert witness, complete field investigation, notifying relevant employees and other parties regarding pending litigation, etc.
4. Ensure all defense expenses, including but not limited to, depositions, motions, and discovery have been approved by PARSAC.
5. No later than 30 days before trial, confirm defense counsel has submitted a report which includes:
 - An assessment of the Member's liability exposure.
 - An assessment of the plaintiff's damages.
 - An assessment of the legal defenses and probability of prevailing, including significant arguments of each party and expected counter arguments.
 - Unique characteristics of the jurisdiction, presiding judge and opposing counsel.
 - The verdict value assuming full liability.
 - Settlement value, considering defendant's liability exposure and chances of prevailing.
 - Status of settlement discussions.
6. Attend mediation, arbitration, settlement conferences on behalf of PARSAC when necessary.
7. Evaluate defense counsel with respect to each defense assignment.
8. Ensure all attorney fees are billed at the agreed hourly rate. All bills shall state with particularity the legal work performed, the hours expended to perform the work and the costs incurred.
9. Audit all bills to make certain the billing practices are in conformance with PARSAC's litigation guidelines, including:
 - Each legal activity is dated and itemized (multiple daily descriptive explanations of activities with a single time entry is not acceptable).

Liability Program

CLAIMS ADMINISTRATOR REQUIREMENTS

- Work being done by associates, paralegals or law clerks is identified, along with their billing rate.
- The amount of time spent on each task is broken down into tenths of hours. Block time billing is not acceptable; therefore, not compensable.
- The rates charged by each attorney working on the case are summarized with the amount of hours to depict the cost per attorney.
- Conferences or consultation between firm attorneys is not compensable unless it is related to some significant legal event (i.e. upcoming trial) and the express approval of PARSAC has been obtained. Duplicative billings from the firm for analysis of legal research or other documentation will be not compensated.
- A breakdown of billing costs, including the firm's internal costs for such items as photocopying and long distance facsimiles.

VI. FEDERAL COURT ACTIONS

The ***Litigation Manager*** must have experience in managing litigation in a Federal Court setting, working knowledge of Federal Court actions and an appreciation of the difference between Federal Court and State Court procedures, including tactical considerations such as:

1. Case Management
2. Rule 26 Disclosures
3. Rule 68 Offers
4. Mediation
5. Selection of Federal Magistrate
6. Removal to Federal Court
7. Pre Trial Conference
8. Jury Selection and Instructions

Refer to **Addendum A** for discussion of each of the above points.

Liability Program

CLAIMS ADMINISTRATOR REQUIREMENTS

VII. DOCUMENTATION

A. The claims adjuster shall establish accurate reserves based on the facts known, within thirty (30) days of receipt of the claim. Legal and adjusting expenses shall be included in the reserve amount; however, adjusting expenses shall not apply to the Member's SIR.

B. The following formula is recommended for establishing and updating reserves:

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 include any potential award of plaintiff's attorney fees, such as, but not limited to, cases involving Federal Civil Rights.

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

- 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. Proposition 51 allows defendants to limit their liability on non-economic damages to their percentage of fault; and
- 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. For claims handled by a **Primary Claims Adjuster**, reserves shall be capped at the Member's self-insured retention (SIR). In accordance with **Section V** above, PARSAC and the **Pool Claims Adjuster** shall be notified once it is determined reserves are likely to reach 50% of the SIR.

3. For claims handled by the **Pool Claims Adjuster**, reserves shall be set at full exposure utilizing the above formula.

Liability Program

CLAIMS ADMINISTRATOR REQUIREMENTS

C. Each claim file shall contain reports necessary to document the decisions made, including all demands, offers of settlement and settlement authority. A captioned report shall be placed in each claim file for:

1. Bodily Injury claims reserved above 25% of the SIR.
2. Property Damage claims reserved above 25% of the SIR.
3. All claims that meet PARSAC's reporting requirements regardless of reserves.

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

Date of Report	Index Bureau Reporting
Member Name	Coverage Questions
Member's SIR	Excess Coverage Potential
Claimant(s) Information	Structured Settlement Possibilities
Date of Loss	Voluntary Settlement Conference Potential
Claim Number (if used)	Subrogation Potential
Facts of Occurrence	Governmental Code Compliance and Immunities
Witness/Participant Statement	Future Course of Action
Suggested Reserves (which reflect exposure)	Next Diary Date
Assessment of Liability	If litigated, defense and plaintiff's counsel information
Review of Damages (including injuries, medical costs, lost wages, dependency, property damage estimates, total loss evaluations, loss of use claims, etc.)	Offsets or Liens

D. All claims shall be coded in accordance with the Cause of Loss codes (**Addendum B**).

E. Photos, diagrams, estimates, statements, plans, contracts, medical, law enforcement and coroner's reports (where applicable) shall be placed in the claim file in a timely fashion.

Liability Program

CLAIMS ADMINISTRATOR REQUIREMENTS

- F. Provide PARSAC with a monthly loss report of all open and closed claims, and monthly payment register showing all payments issued, payee, voucher number/date and claimant name, as well as any ad hoc reports requested by PARSAC and/or Member.

VIII. SUMMARY

Each claim file should be completely documented as outlined above. Audits conducted by PARSAC and/or its excess pool will utilize both industry standards and these Guidelines.

Liability Program

CLAIMS ADMINISTRATOR REQUIREMENTS

ADDENDUM A

Federal Court Actions - Claims Handling Considerations

Claims handling of Federal Court actions require an appreciation of the difference between Federal Court and state court procedures. These differences, and the tactical considerations that arise, are set forth below.

1. Case Management

Federal courts are “hands on” in the control of litigation. At a very early stage in the case, a Case Management Conference is set, out of which will come a Scheduling Order. In most cases, the Scheduling Order will establish the cut off date for every significant event in the life of the litigation, including trial. The court will establish the date for commencement and close of discovery, disclosure of experts, dates for the hearing of dispositive motions, pretrial conference and trial. Once issued, a Scheduling Order is unlikely to be modified by the court, absent a showing of extraordinary circumstances. The claims handler must be conversant with the requirements of the Scheduling Order as this is the blue print for the progress of that case through the federal system.

2. Rule 26 Disclosures

FRCP 26 requires that all parties, without awaiting a discovery request must, within fourteen (14) days of the Rule 26 conference or as required by the Scheduling Order, provide to the other parties:

- A. The name and pertinent information of each individual likely to have discoverable information concerning the matter;
- B. A copy or description of all documents, including electronically stored information, in the possession, custody or control of that party;
- C. Computation of any damages claimed by the disclosing party; and,
- D. Any insurance agreement under which any person may be liable to satisfy part or all of a judgment which may be entered in the action.

The impact of Rule 26 is considerable. At the earliest stages of the case, without any discovery having been propounded, a party must make a disclosure of essentially all of the information that it is then aware of that can be used in the prosecution or defense of the case, including witnesses, documents, and damages information. The consequence for failure to comply with Rule 26 can be that a party is precluded from being allowed to rely upon witnesses or documents at trial. In order to be in a position to comply with Rule 26, the claims handler must aggressively investigate the facts, identity of witnesses, and identity of documents in order to assist counsel in making a full, complete and timely disclosure.

Liability Program

CLAIMS ADMINISTRATOR REQUIREMENTS

ADDENDUM A

Federal Court Actions - Claims Handling Considerations

3. Early Neutral Evaluation/Mandatory Mediation

Many Federal Courts have requirements that the parties participate in an Early Neutral Evaluation or a Mandatory Mediation. These are often scheduled after the Rule 26 disclosures, but prior to any significant discovery taking place. Thorough preparation for the ENE or Mediation can help resolve liability claims and/or position the defendant to make an effect Rule 68 Offer to help reduce the potential attorney fee exposure in Federal Court claims as will be discussed below.

4. Rule 68 Offer

Rule 68 is the Federal Court version of the CCP 998 Offer to settle. An early Rule 68 Offer should be considered in any Federal Court case in which an attorney's fee exposure exists. An attorney's fee exposure will commonly exist in Federal Court actions, notably ADA claims and Civil Rights claims, such as excessive force and false arrest. Many Federal Court actions are settled late in the litigation process for reasons based almost exclusively on the potential attorney fee exposure, despite questionable liability. An early Rule 68 Offer that includes an amount sufficient to compensate the plaintiff for attorneys' fees and costs incurred to that point in time can be effective in precluding plaintiff's recovery of attorneys' fees incurred after rejection of the offer.

5. Selection of Federal Court Magistrate as Trial Judge

Many Federal District Courts offer the litigants the option of selecting the Federal Magistrate as the trial judge. In making this determination, consideration should be given to the advantages and disadvantages of the District Judge versus the Magistrate as the trial judge. Two key considerations are the perceived disposition of each judge toward cases of the nature of the case now pending, and the impact that the choice will make on the scheduling of key events, including the trial date in the matter. The busier docket of the Federal District Judge often results in dates for dispositive motions and/or trial being set much later than would be set on the Magistrate's docket.

6. Considerations for Removal

An action filed in state court, containing federal claims, can be removed by the defendant to Federal Court within thirty (30) days of service of the complaint upon the defendant. By way of example, claims that may be subject to removal are claims for civil rights violations and ADA claims. Considerations for removal include the unanimous jury in Federal Court, the more knowledgeable federal bench concerning federal claims, and the more aggressive case management by the Court.

Liability Program

CLAIMS ADMINISTRATOR REQUIREMENTS

ADDENDUM A

Federal Court Actions - Claims Handling Considerations

7. Pretrial Conference

The Pretrial Conference can occur anywhere in the range of four (4) to eight (8) weeks prior to trial. Prior to the Pretrial Conference, the parties must provide the court with lists of the identity of all witnesses, all documents and exhibits, all anticipated motions, jury instructions and identification of all issues and defenses to be tried. In essence, counsel is expected to be prepared to try the case as of the date of the Pretrial Conference. The failure to present any of the required information to the Court would likely result in the same being excluded from trial. The claims handlers should be aware of the dates established for the Pretrial Conference and should work with counsel to ensure that all required information can be presented to the Court at that time.

Public Agency Risk Sharing Authority of California

Liability Program

CLAIMS ADMINISTRATOR REQUIREMENTS

ADDENDUM B

Cause of Loss Codes

[to be developed]