



## CLAIMS COMMITTEE MEETING AGENDA

Downey City Hall  
2<sup>nd</sup> Floor Training Room  
1111 Brookshire Ave.  
Downey, CA 9041

Wednesday, November 8, 2017  
9:30 A.M.

### CALL TO ORDER

### ESTABLISHMENT OF QUORUM/INTRODUCTIONS

### PUBLIC COMMENTS

*This time is reserved for members of the public to address the Committee relative to matters of ICRMA that are not on the agenda. Persons wishing to address items on the agenda will be permitted to do so during the discussion of the item. No action may be taken on non-agenda items unless authorized by law. Comments will be limited to five minutes per person, twenty minutes in total.*

### APPROVAL OF AGENDA AS POSTED OR AMENDED

*As a matter of procedure, the Committee should approve the agenda.*

### CONSENT CALENDAR

*If the Committee would like to discuss any item listed, it may be pulled from the Consent Calendar.*

- A. Minutes of the September 20, 2017 Claims Committee Meeting .....3
  - B. 2017/18 Claims Committee Attendance Record.....5
- Action: Approval of the Consent Calendar: approve item A and direct staff to finalize, review and file item B.*

### OPEN SESSION

*As to each agenda item, the Committee may take action and/or receive informational reports as appropriate.*

- C. Combine the Liability and Workers' Compensation Litigation Management Policies and Procedures Documents (Beth/John/Todd) .....6
- Action: Approve merging the liability and workers' compensation Litigation Management Policies and Procedures documents, review the recommended revisions, and recommend the Board adopt the revised document effective January 1, 2018.*

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**CLOSED SESSION**

*The Committee will hold a closed session to discuss any or all claims listed on the agenda. Members are reminded to destroy closed session materials after the meeting.*

Discussion of Open Claims and Conference with Legal Counsel pursuant to Government Code Section 54956.95(a):

- Appeal of Coverage Denial: Wong, Alne and Jerry vs. Alhambra
- Botten, Jonathon et al vs. Redondo Beach

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**REPORT FROM CLOSED SESSION**

*Report from Closed Session: Pursuant to Government Code Section 54957.1, the Committee must report in open session any action taken in closed session.*

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**CLOSING COMMENTS**

*This time is reserved to identify matters for future Committee business.*

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**ADJOURNMENT**

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**FUTURE MEETINGS**

January 10, 2018

March 14, 2018

*In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact ICRMA at (949)349-9882. Notification 48 hours before the meeting will enable ICRMA to make reasonable arrangements to ensure accessibility (28 CFR 35.102.35.104 ADA Title II).*

*The Open Session portion of this meeting may be recorded. The recording may be destroyed after 30 days.*



**MINUTES OF THE  
CLAIMS COMMITTEE  
SEPTEMBER 20, 2017  
9:30 A.M.**

A meeting of the Claims Committee was held on September 20, 2017, via webinar/conference call.

<b>Name</b>	<b>Member Agency</b>	<b>Present</b>	<b>Absent</b>
Vicki Cross	Glendora	X	
Yvette Abich Garcia	Downey	X	
Sergio Ibarra	Bell	X	
Sara Nazir	Ingelwood	X	
Alison Stevens	Hawthorne	X	

**Others in Attendance:**

RPA  
Beth Lyons  
Ashley O'Brian  
Christina Floe  
Tyler LaMantia (10:02)

Johnson Schachter & Lewis Luther Lewis

Carl Warren & Company John Beringer  
Todd Johnson

**1. CALL TO ORDER**

Chair Vicki Cross, Glendora, called the meeting to order at 9:39 a.m.

**2. ESTABLISHMENT OF QUORUM/INTRODUCTIONS**

Introductions took place and it was determined a quorum was present.

**3. PUBLIC COMMENTS**

There were no public comments.

**4. APPROVAL OF AGENDA AS POSTED OR AMENDED**

*Motion was made by Yvette Garcia, Downey, seconded by Alison Stevens, Hawthorne, to approve the agenda as presented. The motion carried by unanimous roll call vote.*

**5. CONSENT CALENDAR**

*Motion was made by Yvette Garcia, Downey, seconded by Alison Stevens, Hawthorne to approve the Consent Calendar; approve item A and direct staff to finalize, review and file item B. The motion carried by unanimous roll call vote*

## **6. OPEN SESSION**

### **A. Liability Claims Auditor Selection**

Liability program claim audits are performed every other year in the odd years. In 2015, ICRMA issued a request for proposals (RFP) for both liability and workers' compensation claims auditing services. In November 2015, the Claims Committee selected claim auditor Ken Maiolini and entered into a one-year contract for liability program auditing services. Maiolini completed the program audits in the spring of 2016.

Pursuant to the Bylaws for the Liability Program, the Claims Committee has authority to negotiate and approve contracts within its scope of responsibilities, that are \$50,000 or less, and that fall within the approved budget appropriations.

Because the auditing contract was for a one-year term, the Claims Committee was asked to provide direction regarding the 2017 program audit. The following options were presented for discussion:

1. Issue an RFP for liability claim auditing services.
2. Contact Ken Maiolini to determine if he is interested in amending his contract and performing another audit.
3. Review the RFP responses from 2015, contact the next low bidder, and ask if he is willing to perform the audit at a not-to-exceed amount of \$21,615 (the amount budgeted for 2017).

A summary of the respondents from the 2015 RFP was presented for Committee review.

Motion was made by Yvette Garcia, Downey, to authorize the Executive Director to negotiate and execute a contract for liability program claims auditing services at an amount not-to-exceed \$21,615 with Ken Maiolini. If Ken Maiolini is not able to conduct the audit, the committee asked staff to approach the next low bidder and negotiate with him for an amount not to exceed the budgeted amount. Sergio Ibarra, Bell, seconded. The motion carried by a unanimous roll call vote.

## **7. CLOSED SESSION**

The Committee convened in closed session at 10:08 a.m.

## **8. REPORT FROM CLOSED SESSION**

The Committee convened in open session at 10:15 a.m. and reported the following:

Luther Lewis reported that, in the Kitahara v. Monterey Park matter, the Claims Committee gave direction for the Executive Director to enter into a contract as proposed.

## **9. CLOSING COMMENTS**

There were no closing comments.

## **10. ADJOURNMENT**

The meeting was adjourned by general consensus at 10:16 a.m.



**Subject:** 2017/18 Claims Committee Attendance Record

**Action for consideration:**

Review and file

**Background:**

The Claims Committee (Committee) Attendance Record is presented for review. Pursuant to Section 3.2.5.2 of the Program Bylaws, attendance of Committee members is essential to conducting the Authority’s claims management, and a Committee member missing a maximum of two meetings in a fiscal year (July 1 to June 30), shall be subject to review by the Governing Board concerning forfeiture of his/her membership on the Committee. Committee members may not appoint a delegate to attend the meetings in his/her place.

Member	City	7/12/2017	9/20/2017	11/8/2017	1/10/2018	3/14/2018	5/9/2018	% Attendance
Vicki Cross	Glendora	Canceled	×					100%
Yvette Abich Garcia	Downey	Canceled	×					100%
Sergio Ibarra	Bell	Canceled	×					100%
Alison Stevens	Hawthorne	Canceled	×					100%
Sara Nazir	Inglewood	Canceled	×					100%

**Prepared by:** Christina Floe, Administrative Assistant



**Subject:** Consideration of revisions to the Litigation Management Policies and Procedures

**Action for consideration:**

Approve merging the liability and workers' compensation Litigation Management Policies and Procedures documents, review recommended revisions, and recommend the Board adopt the revised document effective January 1, 2018.

**Background:**

The Workers' Compensation Litigation Management Policies and Procedures (WC LMPP) were last reviewed and revised in November 2015, while the Liability Litigation Management Policies and Procedures (LLMPP) were last reviewed and revised in December 2016.

The Litigation Management Policies and Procedures were reviewed and compared this fall, and several discrepancies were found between the documents. The program managers recommend the policies be combined, with specific differences noted, to align the philosophy of both programs.

Attached for the Committee's review and consideration is the combined policy with specific revisions noted.

**Attachments:** Redline Litigation Management Policies and Procedures, combining the Liability and Workers' Compensation program documents

**Prepared by:** Todd Johnson, Workers' Compensation Program Manager  
Beth Lyons, Executive Director



INDEPENDENT CITIES  
RISK MANAGEMENT  
AUTHORITY

[www.icrma.org](http://www.icrma.org)

# Litigation Management Policies and Procedures

## Liability and Workers' Compensation

December 14, ~~2016~~ 2017

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### Change Record

Date	Description
11/2013	<ul style="list-style-type: none"> <li>· Added provision that hourly rates for Associates should be no greater than 80% that of existing approved rates for Partner rate charged.</li> </ul>
4/2015	<ul style="list-style-type: none"> <li>· Require pre-trial reports 120 days before trial</li> <li>· Require status reports every 60 days</li> <li>· Claims reasonably expected to reach 50% of the member retained limit must have defense counsel assigned within 60 days of the receipt of the claim</li> <li>· Reduced the number of attorneys and paralegals that may work on a claim without pre-approval</li> <li>· Added hourly rates for Of Counsel and paralegals</li> <li>· Clarified the \$300 appellate rate applies to partners only if an appellate law specialist is utilized for the appeal</li> <li>· Increased defense panel insurance requirements from \$1 million to \$2 million</li> <li>· Added language regarding biannual litigation management meetings and annual attorney audit</li> <li>· Added language clarifying that attorneys, not firms, are added to/removed from the Approved Panel Counsel</li> <li>· Require use of Approved Panel Counsel for all litigated claims except at the discretion of the Governing Board</li> <li>· Added language that the member or adjuster shall discuss the attorney assignment with the Liability Program Manager before the engagement letter is sent</li> <li>· Added language that an arbitrator must be approved by the ICRMA Liability Program Manager</li> </ul>
12/2016	<ul style="list-style-type: none"> <li>· Added language to clarify the definition of conflicts of representation for ICRMA defense counsel, effective immediately.</li> <li>· Revised the travel billing provision. Billing for travel may be no greater than 50% of the normal hourly rate (effective March 1, 2017).</li> </ul>
<u>12/2017</u>	<ul style="list-style-type: none"> <li>· <u><a href="#">Combined Liability and Workers' Compensation LMPP documents</a></u></li> </ul>





## Litigation Management Policies and Procedures

The Independent Cities Risk Management Authority (ICRMA) has adopted Liability and Workers' Compensation Litigation Management Policies and Procedures which represent a reasonable and effective path for the management of litigated matters. These guidelines ensure consistency in claim litigation management and define the expectations of claims defense counsel to achieve the best result in an efficient and cost-conscious manner consistent with ethical obligations. It is the intent of the ICRMA to allow Members to select their own defense counsel, while at the same time recognizing that it is in the best interests of all Members to ensure the professional, competent, and cost-effective handling of litigation. Pursuant to ICRMA's Memorandum of Coverage, Members and retained counsel shall comply with these Litigation Management Policies and Procedures ("Procedures") for all claims required to be reported to ICRMA.

**Comment [A1]:** Added introductory intent language

If any provision of this document conflicts with the ICRMA's Memoranda of Coverage, the then current MOC governs whenever approved. Likewise, detail contained in the MOC should be used to clarify implementation of these policies and procedures.

**Comment [A2]:** Added language to clarify the governing document in the event of conflict

### 1. DEFENSE COUNSEL

#### A. Approved Panel Counsel

Attorneys must meet and agree to the following provisions in order to be approved for, and maintain their membership on, the approved panel:

1. **Nomination.** The attorney must be nominated, in writing, by one of the current ICRMA Members, Third Party Administrator (TPA) or by ICRMA. The Governing Board shall have the responsibility of approving the panel of defense attorneys and the authority to add or delete individual counsel from time to time pursuant to recommendations from the Member or Executive Director.
2. **Application Resume.** Upon application to ICRMA, the attorney shall provide a resume setting forth his/her experience as applicable to the handling of ICRMA claims and his/her areas of expertise. As part of the process, the attorney shall affirmatively agree to all provisions of this Litigation Management Policies & Procedures in order for his/her application to be considered by the ICRMA Board of Directors.
3. **Experience.** The attorney on an ICRMA claim must have at least five years of civil litigation practice, which includes substantial and significant defense experience in the area of public sector litigation in California, unless otherwise approved by ICRMA.
4. **Insurance.** The attorney must carry liability insurance appropriate to the legal profession, and in an amount not less than \$2,000,000 per claim.

**Comment [A3]:** This language exists in the WC LMPP

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**Comment [A4]:** Stating the obvious

**Comment [A5]:** The current WC LMPP only requires \$1M in liability coverage, so combining the documents and leaving them as-is reflects increased requirements for WC attorneys.

As an alternative, language could be added to reflect \$2M requirement for liability defense attorneys and \$1M requirement for WC attorneys.

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#### B. Selection

1. Defense counsel shall be selected by the Member, its TPA or its

designated claims adjuster. The selection shall be based on the nature and complexity of the case, the experience and ability of the attorney, as well as other relevant factors.

2. For Liability Exposures, ICRMA's Liability Program Manager serves as a valuable resource to the members and protects the pool's assets, thus the member or adjuster shall discuss the selected attorney with the Liability Program Manager before the engagement letter is sent. Claims reasonably expected to reach 50% of the member retained limit must have defense counsel assigned within 60 days of the receipt of the claim.

**Comment [A6]:** This language does not exist in the WC LMPP. While the WC program manager is also a valuable resource, this provision is viewed as less critical in that program

3. Members must retain defense counsel on ICRMA's Approved Panel Counsel to defend a claim. However, at the request of a Member, in extraordinary circumstances, such as a special expertise of proposed counsel not available from any Approved Panel Counsel, the Governing Board in its discretion may approve selection of counsel other than Approved Panel Counsel, on such conditions as may be set forth by the Governing Board.

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4. Regardless of the selection process, the Member shall bear the financial responsibility of the defense expenses, including fees, until its retained limit is exhausted. The attorney must agree that the hourly rate charged by the firm shall not exceed the current approved rates for partners and associates.

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**Comment [A7]:** This is consistent with policy the Board adopted in the liability MOC, and should be consistent for both programs.

### C. Attorney Client Relationship

Defense counsel has an attorney-client relationship with any Member and/or individual covered party(ies) who are being defended and also with ICRMA as to the defense of the claim.

### D. Removal from the Panel

Any defense counsel may be removed from the Approved Panel Counsel list for failure to adhere to or satisfy these policies and procedures.

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The nominating Member or liability program manager may also seek removal of defense counsel from the Approved Panel Counsel list.

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ICRMA's administrative team may also remove defense counsel from the Approved Panel Counsel list for clerical reasons (e.g., counsel deceased, has left the jurisdiction, has been disbarred).

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#### **D:**

Any defense counsel removed from the Approved Panel Counsel list shall not be permitted to apply for reinstatement until three years from the conclusion of the legal action that gave rise to the conflict.

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**Comment [A8]:** Added language to clarify removal of panel attorneys

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## 2. POLICIES REGARDING LEGAL SERVICES

All counsel assigned to ICRMA claims agree to the following:

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### A. Engagement Letter

All legal services performed, shall be initiated by an engagement letter sent by the Member's TPA on its behalf and copied to ICRMA in the form set forth in the exhibits. No work shall be performed and billed unless such work has been undertaken pursuant to the engagement letter.

Liability for any failure of the engagement letter to properly reflect these policies and procedures shall accrue to the Member. If any provision of the engagement letter conflicts with ICRMA's Memoranda of Coverage, the then current MOC governs whenever approved.

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Comment [A9]: Added clarifying language discussed with the Board in October 2017

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### B. Evaluation of Attorneys and Firms

The performance of each pre-approved attorney will be evaluated annually by the Governing Board. The Governing Board reserves the right to remove any attorney from the panel.

### C. Monitoring Counsel

ICRMA has the right to retain monitoring counsel, whose fees will be paid by ICRMA. The fees and costs for this shall not be applied against the Member's self-insured retention as long as counsel acts only as monitoring counsel. Defense counsel shall fully cooperate with monitoring counsel.

### D. In-House Counsel

A Member has the right to utilize its own in-house City Attorney as counsel to represent the Member in any litigation. However, the in-house counsel shall satisfy and comply with these Procedures. If the attorney is a city employee, his or her salary shall not be considered a defense cost nor will it count toward satisfying the member retained limit.

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The ICRMA Member is likewise bound to satisfy and comply with all policies and procedures in this document.

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### E. Conflicts

The defense counsel selected and the law firm of which he/she is a member must certify that they have no ethical or legal conflicts that would disqualify them from representing any of the Members. In addition, (i) defense counsel shall certify that they will refrain from initiating or maintaining any legal action against any Member, either by way of complaint or cross complaint, during the time that they are included on the panel and accepting defense work from a Member and/or ICRMA; and (ii) they shall agree to disclose any special facts that would or could potentially disqualify them from representation of a Member at the time of the case assignment, or immediately upon discovery. The prohibition from initiating or maintaining any legal action against any Member is deemed to apply to tort

claims or lawsuits for damages by a third party against a Member. The prohibition shall not be deemed to apply to a complaint or cross-complaint against a Member which arises out of a third party claim or lawsuit against a Member, where the complaint or cross-complaint: (1) seeks or alleges indemnity, contribution, reimbursement, comparative fault and/or declaratory relief; (2) does not otherwise affirmatively seek damages; and (3) is approved in writing by the Liability Program Manager as being appropriate as part of the overall strategy of defending a third party suit against the Member. The approval of the Litigation Manager is subject to review by the Claims Committee at the request of any Member against which such a complaint or cross-complaint is brought or proposed. The request for review shall be made in writing to the Executive Director within ten business days of receipt of the written approval by the Liability Program Manager.

#### F. Biannual Litigation Management Meetings

Defense counsel shall participate in litigation management meetings, at least biannually, between the Member, TPA, and ICRMA Liability Program Manager.

~~Reinstatement. Any defense counsel removed from the Approved Panel Counsel list shall not be permitted to apply for reinstatement for three years following removal.~~

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Comment [A10]: Redundant; Already included in the section regarding removal

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### 3. CASE ANALYSIS AND STRATEGY

#### A. Initial Case Analysis.

Within sixty (60) days following assignment of a case, defense counsel shall complete and return a case analysis to the Member, its TPA, and ICRMA's ~~Liability~~ Program Manager in the form attached in the exhibits. The case analysis should include a comprehensive evaluation of the case and litigation plan, including the following:

1. Evaluation of the allegations and legal liability
2. Defense plan and strategy, including the anticipated course of action to be taken and the prospect for success (i.e. motion to dismiss, motion for summary judgment, negotiated settlement, and trial).
3. The facts or elements which must be proved or disproved and the discovery necessary to establish these.
4. The necessity for and timing of the discovery, filing of motions, negotiations, or other objectives.
5. A description of how the work will be distributed among those who will be working on the case.
6. The tactics to be used in defending the case and the advantages to be gained by use of these tactics.
7. Evaluation of settlement status and availability of ADR
8. Investigation, which includes identification of any additional information or documentation that is needed to disprove the plaintiff's claims or to establish defenses in the action. Whenever

possible, this investigation and information-gathering shall be done by the Member or the Member's claims adjustor.

## B. Budget

1. In addition to and submitted at the same time as the Initial Case Analysis, Counsel shall provide an accurate estimate of defense costs for all litigated cases as set forth in the exhibits. Defense Counsel is expected to stay within the estimated case budget throughout the litigation and to report on fees expended in relation to the budget as requested by the Member, its TPA and/or ICRMA's ~~Liability~~ Program Manager.
2. All case budgets must be sent to the Member with a copy to the TPA and ICRMA's ~~Liability~~ Program Manager. Budgets must be approved by ICRMA's ~~Liability~~ Program Manager.
3. Approved Revisions to Case Budget. Changes can occur in any case that will affect the defense litigation plan and consequently alter estimated defense costs. As soon as it is reasonably foreseeable that a revision to the budget is required, an updated litigation budget shall be completed with defense counsel's recommendation for a budget increase. Approval of the Member, its TPA and ICRMA's ~~Liability~~ Program Manager shall be required for all revised budgets.

## C. Reporting

1. Defense counsel shall provide the following written status reports:

After initial case analysis, defense counsel shall provide mandatory written status reports at sixty (60) day intervals setting forth all substantive developments. The defense attorney handling the claim should prepare the status reports. Defense counsel shall report only on new developments since the last report. It is not necessary to repeat the case facts or information previously reported. Status Reports should be as straight-forward and as objective as possible to allow the Member, its TPA adjustor and ICRMA's ~~Liability~~ Program Manager to meaningfully analyze the case and to determine the course of action to be taken. Status reports should include the following:

- The ongoing strategy for defense or resolution of the case, including factual and legal analysis of issues related to liability and damages;
- A description of planned discovery with a time table for

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- completion;
- A brief synopsis of the discovery completed since the last report and significant information obtain through discovery;
- Court dates, including, but not necessarily limited to, mandatory settlement conferences, trial setting conferences, arbitration and trial dates, and other hearings, and
- New settlement demands and the status of any efforts with regard to ADR.

Case developments that have a significant impact on litigation should be reported immediately by defense counsel.

2. Pre-trial report: No later than 120 days prior to trial, the defense trial attorney will provide a trial report (or binding arbitration report if applicable) which shall include:
  - An assessment of liability for all defendants;
  - An assessment of plaintiff's damages;
  - An assessment of the legal defenses and probability of prevailing;
  - The verdict value assuming liability including a survey of jury verdicts and comparable cases;
  - An appraisal of settlement value, considering verdict value and chances of prevailing and a status of efforts regarding ADR;
  - Evaluation of expert witnesses and their expected testimony for both plaintiff and defense, and
  - The defense fees and costs to date, along with a trial budget as set forth in the exhibits.

It is expected that cases will proceed to trial as expeditiously as possible. Defense counsel shall obtain the approval of the Member, its TPA and the ICRMA Liability Program Manager prior to continuing the trial date set by the court.

#### 4. COMMUNICATION

##### A. Correspondence and pleadings

Copies of all correspondence and pleadings shall be promptly provided by defense counsel to the Member, its TPA claims adjustor, and ICRMA's **Liability** Program Manager. Defense counsel will promptly respond to all written correspondence or phone calls and will keep the Member, its claims adjustor and ICRMA's Liability Program Manager fully advised of the progress in each case.

##### B. Depositions, Trials, Arbitrations and Hearings

Immediately upon receipt, defense counsel shall send notice of all depositions, trials, arbitrations, mediations and hearings to the Member, its TPA claim adjuster and ICRMA's **Liability** Program Manager. Defense counsel will coordinate

scheduling with the member and ICRMA Liability Program Manager prior to scheduling. The selected arbitrator must be approved by ICRMA's ~~Liability~~ Program Manager.

## 5. SETTLEMENT AUTHORITY

Defense counsel shall not settle any claim or lawsuit or make a settlement offer in any amount without prior authorization from ICRMA when the settlement requires contribution from ICRMA.

## 6. POLICIES REGARDING FEES, EXPENSES AND REIMBURSEMENTS

### A. Attorney Hourly Rate

The hourly rate charged shall not exceed the approved rates as listed in the exhibits, unless the Member agrees to pay any difference between the maximum allowed rate and the actual rate charged. ICRMA must be notified in writing if the Member agrees to exceed the maximum allowed rate. Regardless of the amount paid to defense counsel, whether it is ICRMA's maximum hourly rate, or such additional amount as the Member may agree to pay, for purposes of computing the Member's retained limit, ICRMA's approved hourly rate shall be utilized. If the matter exceeds the Member's retained limit, ICRMA shall only pay the amount invoiced up to a maximum of the fees listed in the exhibits.

### B. Counsel Billable Activities

No more than two attorneys, and no more than one partner or one Of Counsel, shall be assigned to a matter without prior approval by the City's TPA and ICRMA's ~~Liability~~ Program Manager. No more than one attorney's time should be billed for depositions, hearings, motions, or internal conferences or meetings unless advance approval has been obtained from ICRMA's ~~Liability~~ Program Manager.

### C. Reimbursable Expenses/Disbursements

Reasonable and customary expenses incurred in the case are reimbursable. Counsel shall include all individual items of expense and disbursement in the regular billings. Reasonable and customary expenses include travel costs, filing fees, court reporter fees, witness fees, and photocopying costs. All expenses and/or disbursements in excess of \$500 shall be approved in advance.

### D. Travel Costs

Reasonable and necessary travel costs are reimbursable expenses and must be approved in advance upon submission of the estimated travel expenses. Travel hours shall be billed at 50% of the normal hourly rate.

### E. Non-Reimbursable Expenses

Expenses such as staff overtime, word processing or other secretarial or administrative functions, overhead expenses, special publications, or attendance at continuing legal education seminars shall not be reimbursable.



**F. Defense Experts**

Prior to engaging the services of any defense expert, defense counsel shall obtain the approval of the Member TPA and ICRMA's ~~Liability~~ Program Manager.

**G. Other Expenditures**

Defense counsel shall obtain the approval of the Member TPA and ICRMA's Liability Program Manager for the following expenses:

1. Independent medical examinations
2. Outside investigators
3. Retention of associate counsel, local counsel, or consultant
4. Filing of cross-complaints or counter-claims
5. Legal research projects expected to exceed four hours
6. Research for the preparation of and filing of all motions or other projects expected to exceed \$500
7. Voluntary settlement conferences or ADR methods
8. Expenses expected to exceed \$500, including copying expenses
9. Fees for trial support services
10. Video-taping of depositions

**7. BILLING PROCEDURES**

**A. Billing Statement**

A complete statement for services rendered shall be submitted every thirty (30) days.

**B. Legal Fees**

Legal services should be described in detail. Block billing will not be accepted. Any billing statement not in conformity with these rules will be returned to counsel. All charges for expenses shall be based on actual costs. No blanket charge for office expenses, administrative charges or the like shall be accepted for payment. Copying and facsimile charges are limited to no more than .10 cents per page and subject to pre-approval if expected to exceed \$500. Use of couriers for same day delivery of documents or court filings is discouraged unless absolutely necessary. A descriptive statement should set forth the following:

1. Date the services were rendered;
2. A description of services including a description of each task performed;
3. Identity of the person(s) rendering the services described;
4. Rate at which the person(s) rendering the services is billed;
5. Amount of time expended by each person for the services described;
6. Calculated fee for that particular billing entry; and
7. The total amount paid to date.

This provision applies regardless of the attorney relationship with the ICRMA member including but not limited to employment at the Member, in-house counsel, or other retainer agreements.

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Comment [A11]: Clarifying language

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### C. Billing Reimbursable Expenses and Disbursements

Reimbursable expenses incurred and disbursements made, with supporting documentation for expenses in excess of \$25, are to be itemized and adequately described. All vendor statements shall be attached to the firm's legal bill.

### D. Final Disposition of Case

Upon final disposition of a case (e.g., settlement, dismissal, etc.), counsel shall immediately contact all experts and vendors. Counsel must seek the return of any confidential documents provided in the case. Counsel shall request a final billing from all vendors and experts, and submit his or her own final bill within 60 days. All final billing statements must be clearly marked "Final Billing Statement". **Once ICRMA's file is closed, ICRMA will not pay for any services rendered after file closure.**

## 8. TRIAL REPORT

At the conclusion of all trials, a brief summary trial report should be directed to the Member and ICRMA's ~~Liability~~ Program Manager outlining the trial results and lessons learned that may assist in future ICRMA litigation or risk management.

## 9. FINAL REPORTS

### A. Closing Report

At the conclusion of the case, a short summary report shall be prepared and directed to the Member, TPA, and ICRMA's ~~Liability~~ Program Manager. Court orders and a fully executed settlement agreement shall be submitted to the TPA and ICRMA's ~~Liability~~ Program Manager when received.

### B. Evaluation of Counsel

ICRMA's ~~Liability~~ Program Manager shall periodically review these evaluations, as well as the performance and the initial case analysis and, if necessary, make periodic recommendations to ICRMA concerning the continued status of a particular defense counsel on the approved panel counsel list.

### C. Audit of Defense Firms

ICRMA shall annually-regularly review all defense panel counsel. The purpose of the audit will be to ensure attorneys are consistently following the Litigation Management Policies and Procedures, review subjective data such as closing ratios, legal expense ratios, and total legal expenses, and to report attorney performance to the members.

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Comment [A12]: In 2016, the claims committee determined an annual schedule was too cumbersome at this time

## 10. DISPUTES BETWEEN PARTIES

### A. Arbitration

Any dispute between defense counsel and the Member or between defense counsel and ICRMA pertaining to these Procedures shall not be subject to any court action, but shall instead be submitted to binding arbitration.

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### B. Selection of Arbitrator

Arbitration shall be conducted pursuant to the California Code of Civil Procedure. Arbitration shall be conducted by a three-person panel. Each party shall select one arbitrator and the two arbitrators shall then select a third arbitrator upon mutual agreement. No arbitrator shall be employed or affiliated with the ICRMA or any party to the dispute.

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### C. Arbitration Time Limits

The selection of arbitrators shall take place within twenty (20) calendar days from the receipt of the request for arbitration. Unless mutually agreed otherwise, the arbitration hearing shall commence within forty-five (45) calendar days from the date of the selection of the arbitrators.

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### D. Cost of Arbitration

Each party shall pay the cost of its selected arbitrator and one-half the cost of the third selected arbitrator. In addition, each party shall be responsible for its own costs, expenses and legal fees of arbitration.

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### E. Arbitration Procedure

Except for notification of appointment and as provided in the California Code of Civil Procedure, there shall be no communication between the "parties" and the arbitrator(s) relating to the subject of the arbitration other than at oral hearings. The procedures set forth in California Code of Civil Procedure Section 1293.05 relating to depositions and discovery shall apply to any arbitration pursuant to this Section. Except as provided otherwise above, arbitration shall be conducted as provided in Title 9 of the Code of Civil Procedure (commencing with Section 1280). The decision of the arbitrators shall be final and binding, and shall not be subject to appeal.

AGREEMENT TO COMPLY WITH PROCEDURES

I AGREE TO ABIDE BY THE ICRMA'S LITIGATION MANAGEMENT POLICIES AND PROCEDURES. I UNDERSTAND THE CITY AND ICRMA HAVE THE RIGHT TO ENFORCE THE TERMS OF THIS AGREEMENT AS TO THE UNDERSIGNED ATTORNEY.

Dated:

\_\_\_\_\_  
[Attorney's Law Firm]

By:

\_\_\_\_\_  
[Individual Attorney]

**Exhibit A - ICRMA Rate Schedule**

Liability: The hourly not-to-exceed rate for ICRMA liability defense panel attorneys is established as follows:

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Type of case	Position	Rate
General Civil Litigation (including fire, police, premise liability, and dangerous condition of public property)	Partner	\$225
	Of Counsel	\$215
Civil Rights & Employment Practices Litigation	Partner	\$250
	Of Counsel	\$240
Appellate Work	Partner	\$300*

The hourly rate for Associates shall be no greater than 80% that of existing approved rates, or the actual Partner rate charged, whichever is less. Associates working appeals may only charge 80% of the hourly rate noted above, not 80% of the rate for appellate work.

The hourly rate for Paralegals shall be \$100.

The rates shown are subject to change only with ICRMA Governing Board’s approval.

\*The \$300 rate applies to partners only if an appellate law specialist, as certified by the State Bar, is being utilized for the appeal. If an appellate law specialist is not utilized, the rate listed above for the special type of claim instead applies.

Workers’ Compensation: The hourly not-to-exceed rate for ICRMA workers’ compensation defense panel attorneys is \$150 per hour. Paralegal or non-attorney professional work shall not exceed \$100 per hour. Charges for legal assistant work shall not exceed \$80 per hour. Ranges for hourly rates are not acceptable.

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**Exhibit B – Engagement Letter**

[INSERT DEFENSE COUNSEL NAME]

[Date]

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Re: Name of Claim \_\_\_\_\_  
Date of Loss: \_\_\_\_\_  
Date Claim Made:- \_\_\_\_\_  
Our File No.: \_\_\_\_\_

Dear Mr./Ms. \_\_\_\_\_:

This correspondence confirms that you have agreed to undertake the defense of the City in the above-captioned matter, and that you will be the attorney responsible for this matter.

The City is a member of the Independent Cities Risk Management Authority (“ICRMA”) which provides pooled self-insurance for the defense and indemnity of this claim pursuant to the Memorandum of Coverage between the City and ICRMA. The ICRMA program year for this claim is [enter year] and the city has a self-insured retention of \$[enter SIR amount]. The Memorandum of Coverage provides as follows:

“The MEMBER acknowledges and agrees that its defense counsel has an attorney-client relationship with any COVERED PARTY who is being defended and also with ICRMA as to the defense of the CLAIM. MEMBER acknowledges and agrees that its defense counsel shall comply with ICRMA’s Litigation Management Policies and Procedures (LMPP).”

This provision applies to your defense of this Claim. As a condition to this engagement, you agree to comply with all of the requirements of the LMPP which is available at <http://www.icrma.org/Programs/Liability.aspx>. As provided in the LMPP, your Initial Case Analysis and Budget are due on [enter date]. Comprehensive status reports are due every 60 days thereafter. As a further condition, you certify that the firm has appropriate insurance as outlined in the LMPP. Please review the LMPP regarding other reporting requirements and contact me with any questions.

Field Code Changed

Your primary contact at the City shall be [enter name]. As provided in the LMPP, copies of all correspondence, pleadings, and reports should be sent to me, the City, and ICRMA’s ~~Liability~~ Program Manager. All statements for legal fees and costs should be sent to me.

Thank you for accepting this new case subject to the terms set forth in this Agreement. We look forward to working with you on this matter. Kindly countersign this engagement letter and return a signed copy to me [alternative: kindly respond to this email to acknowledge your agreement].

Very truly yours,

\_\_\_\_\_  
TPA Adjuster

Copy:

City

| ICRMA ~~Liability~~ Program Manager

I AGREE TO THE TERMS OF THIS ENGAGEMENT AND AGREE TO ABIDE BY ICRMA'S LITIGATION MANAGEMENT POLICIES AND PROCEDURES. I UNDERSTAND THE CITY AND ICRMA HAVE THE RIGHT TO ENFORCE THE TERMS OF THIS AGREEMENT AS TO THE UNDERSIGNED ATTORNEY.

Dated: \_\_\_\_\_

\_\_\_\_\_  
[Name of Attorney's Law Firm]

By:

\_\_\_\_\_  
[Individual Attorney]

**Exhibit C – Case Analysis**

Caption of Lawsuit: \_\_\_\_\_

Court: \_\_\_\_\_ Case Number: \_\_\_\_\_

Date Suit Filed: \_\_\_\_\_ Date of Service: \_\_\_\_\_

Fast Track? \_\_\_\_ Yes \_\_\_\_ No

Date of Loss: \_\_\_\_\_

I. PARTIES

A. Plaintiffs:

B. City and City-Related Defendants:

C. Third-Party and Other Defendants:

II. TRIAL DATE AND OTHER IMPORTANT DATES

III. JURISDICTION AND EVALUATION

IV. TRIAL JUDGE AND EVALUATION

V. EVALUATION OF COUNSEL

A. Plaintiff's Attorney's Name and Evaluation:

B. City's Defense Attorney's Name:

C. Co-Defendants' Attorneys' Names and Evaluations:

VI. STATEMENT OF FACTS

VII. INJURIES

VIII. SPECIAL DAMAGES

A. Medical Expenses:



- 1. Past:
- 2. Future:
- B. Loss of Earnings:
  - 1. Past:
  - 2. Future:

C. Other (specify);

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IX. LIABILITY ALLEGATIONS

- A. Plaintiff's Contentions:
- B. Defenses:
  - 1. Legal Defenses:
  - 2. Factual Defenses:
- C. Plaintiff's Expert Witnesses and Opinions:
- D. Defense Expert Witnesses and Opinions:

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X. VERDICT EXPOSURE

- A. Chances of Defense Verdict:  
[Note: a percentage number shall be provided.]
- B. Gross Verdict Range as to all Defendants:
- C. Potential Offsets and Credits:
- D. Net Verdict Range to City after Offsets, Credits and Allocation of Fault:
- E. Plaintiff's Attorney's Fees (if applicable)
- F. Punitive Damages (if applicable)

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XI. SETTLEMENT HISTORY

- A. Last Demand:
- B. Last Offer:
- C. History of Settlement Negotiations:

XII. RECOMMENDATIONS OF COUNSEL

- A. Reasonable Settlement Value:
- B. Proposed Litigation Strategy:
- C. Other Recommendations:

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XIII. MISCELLANEOUS

- A. Does Complaint Conform to the Tort Claim Filed?  
(If not, specify differences)
- B. Is Indemnification or Contribution Available?  
(If so, specify by whom, and in what amounts)

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DEFENSE FIRM:

I have read and will comply with ICRMA's Litigation Management Policies and Procedures and I affirm that there are no known legal or ethical conflicts in our representation of the defendant(s) in this case:

Prepared by: \_\_\_\_\_  
Print Name

Signature: \_\_\_\_\_

Date Prepared: \_\_\_\_\_

**Appendix D – Litigation Budget**

Case Name: \_\_\_\_\_ ICRMA Member: \_\_\_\_\_

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Case Caption: \_\_\_\_\_ Venue: \_\_\_\_\_

Defense Firm: \_\_\_\_\_ Partner in Charge: \_\_\_\_\_

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Instructions: 1. Estimate the hours each attorney and paralegal will bill for each activity.  
2. Total the hours for each person. 3. Multiply the hours by the hourly rate to project the per person fees. 4. Add all of the projected fees to obtain the pre-trial fees total.

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**Part I: Pre-Trial Budget/Pre-Trial Fees**

A. Case Assessment, Development and Administration:

ACTIVITY	PARTNER HOURS	ASSOCIATE	HOURS
PARALEGAL HOURS			

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1. Fact Investigation, \_\_\_\_\_  
\_\_\_\_\_ Development & Admin.

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2. Case Analysis/Strategy \_\_\_\_\_  
\_\_\_\_\_

3. Other Case Assessment, \_\_\_\_\_  
\_\_\_\_\_

4. Development & Admin. \_\_\_\_\_  
\_\_\_\_\_

B. Pre-Trial Pleadings & Motions:

ACTIVITY	PARTNER HOURS	ASSOCIATE	HOURS
PARALEGAL HOURS			

1. Demurrer \_\_\_\_\_  
\_\_\_\_\_

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2. Answer/Cross-Complaint \_\_\_\_\_  
\_\_\_\_\_

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3. Other Pleadings \_\_\_\_\_  
\_\_\_\_\_

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4. Dispositive Motions \_\_\_\_\_  
\_\_\_\_\_

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5. Other Legal Research \_\_\_\_\_  
\_\_\_\_\_

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6. Other Written Motions \_\_\_\_\_  
\_\_\_\_\_

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7. Court Mandated Conf. \_\_\_\_\_  
\_\_\_\_\_

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C. Discovery:

ACTIVITY	PARTNER HOURS	ASSOCIATE	HOURS
PARALEGAL HOURS			

1. Written Discovery \_\_\_\_\_

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2. Document Production \_\_\_\_\_

3. Depositions \_\_\_\_\_

4. Expert Discovery \_\_\_\_\_

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5. Discovery Motions \_\_\_\_\_

6. Other Discovery \_\_\_\_\_

**Est. Total Pre-Trial Hrs.** \_\_\_\_\_

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**Hourly Rate** \_\_\_\_\_

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**Hours x Hourly Rate =** \_\_\_\_\_

**Estimated Pre-Trial Fees** \_\_\_\_\_

**Total Estimated Pre-Trial Fees:** \$ \_\_\_\_\_

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**Part II: Pre-Trial Budget Costs**

Name of Expert or Cost	Indicate Type (expert, expert fee, or other cost)	Total Cost

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**Total Estimated Pre-Trial Costs:** \$ \_\_\_\_\_

**Total Estimated Pre-Trial Fees & Costs:** \$ \_\_\_\_\_

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**Part III: Alternative Dispute Resolution**

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ADR RECOMMENDED (Y/N)	EST. FEES	EST. COSTS	TOTAL
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- A. Mediation ( ) \_\_\_\_\_
- B. Non-binding Arbitration ( ) \_\_\_\_\_
- C. Binding Arbitration ( ) \_\_\_\_\_
- D. Other \_\_\_\_\_

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**Part IV: Trial Preparation and Trial**

Note: An updated pre-trial budget must be submitted with a pre-trial report 120 days before trial is set to begin.

**A. Trial Fees**

**1. Witness Preparation**

i. Fact Witnesses \_\_\_\_\_ Fee: \$ \_\_\_\_\_

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\_\_\_\_\_ Fee: \$ \_\_\_\_\_

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ii. Expert Witnesses \_\_\_\_\_ Fee: \$ \_\_\_\_\_

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\_\_\_\_\_ Fee: \$ \_\_\_\_\_

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**2. Written Motions (itemize separately)**

Motion: \_\_\_\_\_ Fee: \$ \_\_\_\_\_ Motion: \_\_\_\_\_ Fee: \$ \_\_\_\_\_

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Motion: \_\_\_\_\_ Fee: \$ \_\_\_\_\_ Motion: \_\_\_\_\_ Fee: \$ \_\_\_\_\_

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3. Jury Verdict & Other Required Submissions \_\_\_\_\_

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4. Other Trial Preparations & Support \_\_\_\_\_

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5. Trial and Hearing Attendance \_\_\_\_\_

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6. Post-trial Motions & Submissions \_\_\_\_\_

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**Total Estimated Trial Fees: \$ \_\_\_\_\_**

**B. Trial Costs**

1. Witness Fees \_\_\_\_\_

2. Trial Transcripts \_\_\_\_\_

3. Trial Exhibits \_\_\_\_\_

**Total Estimated Trial Costs: \$ \_\_\_\_\_**

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**Total Estimated Trial Preparation, Fees & Costs: \_\_\_\_\_**

**Part V: Appeal**

EST. FEES                      EST. COSTS                      TOTAL

A. Appellate Motions \_\_\_\_\_

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and Submissions \_\_\_\_\_

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B. Appellate Briefs \_\_\_\_\_

(Itemize Separately) \_\_\_\_\_

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C. Oral Argument \_\_\_\_\_

1. Preparation \_\_\_\_\_

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2. Attendance at Argument \_\_\_\_\_

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**Total Estimated Appeal Fees & Costs: \$ \_\_\_\_\_**

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**TOTAL recommended litigation budget (Parts I, II, III, IV & V): \$ \_\_\_\_\_**

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**PROJECTED COMPARISON --- SETTLEMENT AND  
DEFENSE COSTS AT EACH STAGE OF LITIGATION**

Settlement/Jury Value Range	Stage of Litigation	Anticipated Defense Costs & Fees at each stage
\$ _____ to \$ _____	Now	\$ _____
\$ _____ to \$ _____	Through ADR (Including any discovery necessary for ADR)	\$ _____
\$ _____ to \$ _____	Through Discovery	\$ _____
\$ _____ to \$ _____	Through Pre-Trial/Settlement Conference	\$ _____
\$ _____ to \$ _____	Through Trial	\$ _____

In executing and returning this analysis, you are warranting that you have read and will comply with ICRMA's Litigation Management Policies and Procedures regarding defense litigation management and that there are no legal or ethical conflicts in your representation of defendant in this case. If more space is required to respond to any requested information, please asterisk the same and attach an additional sheet or sheets to the analysis.

Prepared by: \_\_\_\_\_

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