



INDEPENDENT CITIES
RISK MANAGEMENT
AUTHORITY

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Liability Third Party Claim Administration Performance Standards

January 1, 2019



TPA Performance Standards
Change Record

<u>Date</u>	<u>Description of Change(s)</u>
January 1, 2014	Made substantive changes, added timeframes, added sample adjuster's report, rearranged and clarified language throughout
January 1, 2019	Revised language throughout and added "checklist" items.

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Loss Reporting

New losses reported to the TPA should be set up and entered on-line within two working days of receipt of the loss. The case files should be made accessible online for ICRMA and the City's reference and review including City representatives, claims auditors and agents. It should include all factual, investigative, and assessment information. Case files should be made available for the City's reference and review, 24 hours a day and 7 days a week. ICRMA's Liability Program Manager should also have accessibility 24/7. Within two business days after receipt, TPA should acknowledge claim receipt with the City. Within 30 days of the City's receipt of notice of a claim, the TPA is required to report the claim to ICRMA in accordance with the applicable Memorandum of Coverage.

ICRMA's Liability Program Manager will be responsible for reporting to ICRMA's excess insurer(s) or re-insurer(s).

File Administration

TPA shall maintain all claim records in an electronic claim management system. The system shall be protected by security and disaster recovery practices that provide for the protection, backup and recovery of claim data. Claim files should be set up so that contents are orderly and contain consistent documentation with the following information: Substantiation of initial reserve analysis, documentation of investigation and liability analysis, coverage analysis, documented reserve analysis, timely supervisory ad-hoc reviews and diary, record of frequency and times when two-point contact is attempted, and an action plan with target dates for completion.

The TPA will regularly forward data to ICRMA in accordance with the Universal Data Standards. TPA will provide additional data and/or ad hoc reports upon request by ICRMA.

Adjuster's Contacts

Two-point contact, preferably voice-to-voice, should be made with the claimant (or attorney) and with the City, within two working days of receipt of the claim. The adjuster should verify the facts of the loss, request documentation of damages (if any) and identify witnesses. Depending on the severity of the loss, adjuster should take or arrange for a recorded statement. Where physical injury is alleged, the adjuster should send a medical release form to the claimant, with a stamped and self-addressed return envelope. A request for recorded statement and medical authorization should be requested, regardless of attorney representation.

The TPA should document in the file notes at least two phone call attempts to the claimant within two working days, and if the adjuster is unable to make contact during this timeframe, follow-up in writing with either a contact note or letter of acknowledgement with a request for the claimant to contact the adjuster.

The adjuster should also contact the City within two working days of receipt of notice of a claim to discuss and to initiate the investigation process to determine liability without delay. Such contact with the City should be clearly documented in the file notes.

Check List

- Two-point contact should be made with the claimant or attorney and with the City within two working days of receipt of the claim.

Investigation

Investigation involves issues of liability, contribution, subrogation potential, and causal relationship between the occurrence and stated injury or property damage. The TPA should immediately initiate an investigation. Any issues that may be material to potential litigation and in cases involving significant property damage or injury, undertake, or arrange for, immediate on-site investigation and/or claimant or witness recorded or written statement.

Checklist:

- On-scene investigation
- Recorded statement

Losses with injury require obtaining the following information: documentation of related special damages, claimant's medical records, obtaining MMSEA reporting compliance declaration, CMS reporting, and Central Index Bureau's report for prior injury data, and photos/diagram of the occurrence scene. Additionally, recorded statements, where applicable, should be taken to preserve testimony and evidence.

For claims involving serious physical injuries, total loss of vehicle or extensive property damage, field investigations should be completed by the adjuster. On cases deemed sensitive by the City or high value cases, if outside investigators, appraisers, or experts are needed, the TPA should involve the City in the selection of appropriate and qualified vendors to conduct such investigations. The TPA should advise the City as to costs that may be incurred.

Checklist:

- Contact City when selecting vendors to assist with investigation

All investigative documentation should be maintained in the claim file. Such documentation may include police reports, fire and emergency medical services reports, loss scene diagrams, photos, audio and video investigative material, sub-rosa information, OSHA or any other authority having jurisdiction, medical records, and recorded or written statements.

Opportunities for early resolution should be recognized and acted upon early in the handling of the claim. Investigation should be started immediately upon receipt of the claim. If the investigation cannot be completed within 15 working days of assignment, the adjuster needs to document efforts in the form of an action plan with what needs to be completed with an anticipated time frame.

Checklist:

- Investigation should be completed within 15 working days, if not, document what needs to be completed.

Liability and Damages Assessment

TPA shall make an initial liability assessment within 15 working days of initial receipt of the claim and the liability position should be clearly documented in file. If unable to assess, document what is still needed to assess the liability. Once the liability determination has been made, TPA should seek authorization from the City to send notification to the Claimant advising of claim acceptance or rejection, with copies to the City and ICRMA, if applicable. If the claim is to be rejected, all efforts shall be made to reject within 45 days. Liability should be continually re-assessed as new information is received. Any changes in liability position should be communicated to the City and ICRMA immediately and fully documented with any changes in action plan. Once member's full or partial liability is determined, the TPA should obtain, verify and evaluate damages.

Current action plans should be maintained in file notes, based on investigative findings and developments. Action plans should include resolution goals and the specific interim steps needed to move the claim toward resolution. Action plans should be reviewed as a part of each diary review and, for active claims, should be updated at least every 60 days. Periodic evaluation of the file should be conducted to determine whether fraud triggers are present. If fraud triggers are identified, adjusters should make appropriate internal referrals and notifications.

The TPA shall prepare a claim report, a sample of which is attached as Exhibit A, which contains all pertinent information regarding the claim and the liability and damages assessment. Subsequent updated TPA reports, containing significant changes to the file's evaluation, shall follow at intervals no greater than 60 days.

Checklist:

- Liability assessed within 15 working days. If not completed, document what is needed to fully assess.
- Authorization from the city to accept or reject.
- Action plan completed with interim steps to move claim to resolution and updated every 60 calendar days.
- Fraud triggers identified?
- Exhibit A claim report completed.

Diaries and Claim Progress Notes

File notes should indicate prompt establishment of an initial diary date and subsequent follow up at intervals of 60 days or less, depending on claim activity. Progress notes should include actions taken and an updated plan of action documenting adjuster's plan for future activity to move the claim to resolution. Diary notes should specify the action to be taken on next review and no claim should be placed on diary again without taking further action. Documentation in progress notes should include, date of entry, adjuster name, and information based on fact. Progress notes should not contain opinion nor speculation on the part of the adjuster. TPA shall monitor claims for active diaries and should compile a monthly report of any claims without a future diary date.

Checklist:

- Progress notes utilized include specific actions taken and plan of action.
- Diary is set with specific action to be taken on the next review.

Interim Payments

TPA should be responsible for review and payment, with City's approval, if necessary, of interim payments including initial medical expenses, replacement vehicles, and any other pre-resolution expenses. Interim payments are strongly discouraged. If the City intends to authorize certain interim payments, such authorizations should be clearly specified by the City. All payments must be supported by documentation in the claims file.

Reserving

TPA should establish and document initial reserves within two working days of receipt of the claim. Reserves should be established appropriately to reflect the current exposure of the claim based on current facts of the claim and the ultimate probable cost of each claim.

Any adjustments to reserve levels due to material change or developments, such as case evaluation and budget from defense counsel, additional injury information, failure to prevail on demurrer or MSJ, or likelihood of trial, shall be adjusted within three days of receipt of the information. Every 90 calendar days, TPA shall review the reserves to determine if they are appropriate. Any changes in reserves should be clearly documented.

On ICRMA reportable claims, TPA shall consult with ICRMA's Liability Program Manager when setting or changing reserves.

Checklist:

- Initial reserves set within two working days of receipt of claim.
- Reserves adjusted due to material change or development.
- ICRMA Liability Program Manager consulted when setting/changing reserves on ICRMA reportable claims.

Litigation Management

TPA must ensure compliance with all ICRMA Litigation Management Policies and Procedures (LMPP), which are incorporated into these standards by reference. TPA shall forward all documents required by the LMPP to the ICRMA Liability Program Manager within the timeframes established in the LMPP.

Checklist:

- All documents required by the LMPP submitted to the ICRMA Liability Program Manager.

Risk Transfer/Subrogation

During investigation, the TPA should identify claims in which there is potential opportunity for full or partial risk transfer to another individual or entity. The City's financial burden may be transferred to another party through a contract, such as a hold harmless clause in a vendor contract, or a professional risk bearer such as an insurance company. In addition, upon completion of prompt liability determination, the TPA should tender the claim to the responsible party within 10 days of identification. If no immediate acceptance, the TPA should follow-up with the tendered party

regarding acceptance or refusal of the tender. Other opportunities of recovery include statutory liens to legal judgments, excess insurance, collateral source offsets (as allowed in the respective court systems), and apportionment. In litigated claims, TPA should identify appropriate opportunities to add co-defendants, add counterclaims or third party claims but should obtain city approval before pursuing such pleadings.

If the City pays for any damages deemed the responsibility of another, the TPA should initiate subrogation efforts. The TPA must use a cost benefit analysis to determine if the cost of recovery exceeds the recovered amount. Where potential recovery amounts are under \$500, the TPA should obtain authority from the city before pursuing recovery.

Checklist:

- Risk transfer and subrogation potential identified and pursued.

Claim Disposition and Settlement Resolution

TPA should clearly document a written disposition strategy and plan of action with specific time frames for completion. When full or partial liability has been accepted, the TPA should immediately document its plan of action to resolve in order to avoid future litigation costs or additional litigation costs. Consideration for all possible settlement avenues, such as Alternative Dispute Resolutions, Mediation, Arbitration, and Structured settlements should be given. TPA has no authority to settle a claim without written authorization from the City and ICRMA, as required. The final payment should be made based upon the timeframe established in the settlement agreement.

A closing check list should be completed by the adjuster. The checklist should include all closing documents, i.e. releases, dismissals, resolution of Medicare's interests, expert and defense invoices paid, appropriate posting of all financials, and reserve closure. Attention must be given to reopened files, due to additional financial postings, etc. to ensure the files are closed upon conclusion. All should be completed within 60 calendar days of the settlement or court order.

- **Checklist**

Close files with appropriate documentation within 60 calendar days.

Supervisory Case Review

The role of the supervisor is to guide the process from claim receipt through resolution. Successful reviews will ensure a uniform claim management process and individual adjuster actions and decisions are in alignment with TPA/ICRMA practices. The supervisor should document in the claim progress notes all supervisory activity, approval of proposed reserves, payments or settlements over specified amounts, and suggestions for future claim handling. Documented supervisory review should occur at least every 90 calendar days upon any claim reaching an incurred value in excess of \$25,000 and on all claims newly in litigation. All closed files should be reviewed.

Checklist:

- Review all claims in excess of \$25,000, newly litigated claims, and all closed files.

Communication/Adherence to Special Instructions

Adjuster should maintain open communication with the City on each individual claim and document which City staff member(s) should receive updates in the claim file notes.

Checklist:

- Has the City been updated on the case based upon its expectations?

Methods of communication include monthly loss runs, status reports, captioned reports, reserve and settlement authorizations, conducting claim reviews, and returning phone calls and email inquiries from the City.

For each fiscal year, the TPA shall provide cumulative monthly loss runs reflecting:

- Claimant name
- Date of Loss
- Responsible location or department
- Loss description and cause
- Status of claim (open/closed) Litigation Management
- Amounts reserved, paid, recovered and incurred

The member and the TPA shall meet quarterly to discuss the status of all open litigated claims and to develop a plan to complete any additional investigation required to evaluate liability or damages. Loss run reports must be provided no later than the 10th day of each month to the City. Other reports should be made available to members upon request.

A report of all open claims shall be provided to ICRMA monthly in accordance with ICRMA's Universal Data Specifications. A claim status report shall accompany any request for reserve, payment or settlement over \$10,000. Status report shall include a synopsis of the loss, the current status of the loss, proposed action plan and current financial totals.

TPA should adhere to ICRMA's and the City's specific instructions with regard to issues such as location coding, reserving, status reports, surveillance, subrogation/contribution recoveries, assignment of defense counsel, and settlement authority. When requested, the Adjuster should maintain adequate communication with external interests. Liability claims should be reserved and paid under the classifications set forth in the ICRMA Universal Data Specifications.

Data Reporting

TPA must adhere to the ICRMA Universal Data Specifications Document, which is incorporated into these standards by reference.

TPA Timeline Summary

*This timeline summary is meant to serve as a helpful summary.
Please refer to the performance standards for complete and accurate details.*

Timeframe	Action
2 working days	Open claim Acknowledge receipt of claim Complete two-point contact Set reserves
3 working days	Within 3 days of significant developments, adjust reserves to reflect status
15 working days	Complete investigation Liability and damages assessment
30 calendar days	Prepare captioned report
60 calendar day intervals	Update action plan Update diary
90 calendar day intervals	Update reserves
60 calendar days post settlement/verdict	Ensure all invoices have been received Close claim

Exhibit A - Template Adjuster Report

CONFIDENTIAL – ATTORNEY/CLIENT PRIVILEGE

Place on TPA letterhead

[insert date]

REPORT #1 [Insert new number as subsequent reports are generated]

[Insert name of ICRMA member]

[Insert address of ICRMA member]

[Insert city, state, zip of ICRMA member]

Attention: [Insert ICRMA member - liability contact name]
[Insert ICRMA - liability manager name]

Reference: Principal: [Insert ICRMA member name]
City Claim Number: [Insert claim number(s)]
Loss Date: [Insert DOL]
Claim(s) Made: [Insert date claim received]
Claimant(s): [Insert name(s)]
Our File Number: [Insert number]

Dear [Insert name]:

PREVIEW:

[Insert brief description of the incident and factual allegations]. *Example: These claims arise out of an incident where a City employee, driving a City vehicle, while in the course and scope of his employment, struck a pedestrian who was walking across a City street within the crosswalk. The pedestrian, a 50 year old male, died as a result of his injuries. An attorney for three survivors of the decedent has presented claims on behalf of each of the survivors.*

The [insert number] individuals who have presented a claim are as follows:

1. [Insert name and address]
2. [Insert name and address]
3. [Insert name and address]

[Insert additional if necessary]

The claimants are represented by the Law Offices of [Insert attorney name, firm name, and address]

OTHER INSURANCE:

[Insert applicable insurance]. *Example: None indicated.*

DATE, TIME & PLACE:

[Insert date, time, place]. *Example: The incident occurred on January 4, 2014 at 11:15 a.m. at the intersection of City Avenue and Town Street in Anytown, California.*

LEGAL REQUIREMENTS:

1. Date Claims Filed Under Government Code:
[Insert text]. *Example: An attorney for the claimants filed in the claims in a timely manner on [enter date].*
2. Action By Public Entity:
[Insert text]. *Example: The TPA has conducted an investigation and is preparing a report. The City has also conducted a police investigation.*
3. Statute of Limitations:
[Insert text]. *Example: The Statute of Limitations for this claim is [enter date if claim is rejected and if claim is not rejected].*

INCIDENT DESCRIPTION / FACTS IN BRIEF:

[Insert text]. *Example: The accident occurred when a City employee, while driving a City vehicle, failed to see a pedestrian in a marked crosswalk and struck him with his vehicle. The pedestrian died as a result of his injuries.*

INFORMATION PROVIDED BY CITY:

[Insert text]. *Example: The City employee, [insert name], was contacted on the scene by the investigating officer. He related the following information: He was driving his City vehicle northbound on ABC Avenue stopped at the intersection with City Avenue. He stated he looked left and didn't see anyone. Another vehicle stopped on the westbound City Avenue after him so he had the right of way and began to enter the intersection to make a left turn onto City Avenue at no more than 10 miles per hour. He looked left as he entered the intersection and then looked back to the right to make sure the other vehicle didn't start to drive. When he looked left again he saw the man in the crosswalk. He saw the pedestrian in enough time to apply the brake, but he couldn't stop and the front end of his vehicle hit the man. He came to a complete stop and he couldn't see the pedestrian so he backed up and drove to the curb. He immediately called 911 from his cell phone.*

INFORMATION PROVIDED BY CLAIMANT:

[Insert text]. *Example: No statement was taken by the police due the claimant being unconscious as a result of his injuries sustained in the collision.*

POLICE REPORT:

[Insert text]

PHOTOGRAPHS:

[Insert text]. Example: ABC Police Department took photos but we have not received them to date.

OCCUPANTS – CITY VEHICLE:

[Insert text]. Example: Driver only.

WITNESSES:

[Insert text]. Witness #1: [Text should include witness name and statement]

[Insert text]. Witness #2: [Text should include witness name and statement]

[Insert additional if necessary]

INFORMATION RE. INJURIES/FATALITY:

[Insert name, date of birth, and address of injured party/decedent].

[Insert analysis]: Example: An autopsy report was submitted with the claims and it verified the decedent died of injuries suffered in the subject accident.

LIABILITY:

[Insert adjuster analysis]: Example: Liability rests with the City as the police determined the City driver was the sole cause of the incident.

COVERAGE:

[Identify coverage issues]:

WORK TO BE COMPLETED:

[Insert tasks to be completed]. Example:

1. Determine the amount of the claim being presented by the attorney.
2. Obtain additional documentation.
3. Resolve liability exposure.
4. Provide ICRMA updated reports as the claim develops.

CLAIM STATUS/RESERVE:

	<u>Claim</u>	<u>Status</u>	<u>Reserve</u>
1.	API – [Insert name]	Open	\$300,000
2.	API – [Insert name]	Open	\$100,000
3.	APD – [Insert name]	Open	\$30,000

[Add additional as necessary; subsequent reports should also include reserve and payment information]

KEY DATES:

Updated TPA liability analysis report due (60 days after this report): [insert date]

Attorney Initial Case Analysis due (60 days after attorney assignment): [insert date]

Budget due (60 days after attorney assignment): [insert date]

Next Status Report due (60 days after this report): [insert date]

COMMENTS:

Due to the fatality, this claim has been reported to ICRMA.

We will continue our handling as outlined above, subject to your supervision. Our reports will follow.

[Insert Adjuster Name]

[Insert TPA firm name]