

**CLIENT INSTRUCTIONS – WORKERS’ COMPENSATION CLAIMS –  
UPDATED DECEMBER 1, 2014**

**ORM INTERNAL AUTHORITY DESIGNATION**

In order to streamline and improve the efficiency of our joint claims handling processes, workers’ compensation claims have been assigned by alphabet, by the claimant’s last name. The ORM supervisors will be your primary contact person for approval of payments in excess of \$25,000, requests for an attorney appointment, requests for a contract amendment, and requests for reserve increases. If the requested matter is above their authority level, they will route it to the appropriate person within ORM. Alpha assignments are as follows:

Debi Patt (342-8458) – A through F and X through Z

Garrilind Alexander (219-0412) – G through N

Amanda Major (342-8451) – O through W

FARA should submit all RSA’s relative to workers compensation claims to the appropriate ORM supervisor for coordination with claims council.

**COMMUNICATIONS BETWEEN FARA AND ORM**

Always include the FARA claim number and the name of the claimant in the subject line. If there is a critical date or some urgency, flag as high importance and add in subject line such as “Trial date\_\_\_ or Follow-up to RSA or Contract Amendment”.

**LOCATION CODES**

Each State agency is assigned a location code to aid in premium development and claim administration.

Once a claim has been entered into the ICE system, FARA should not change a claim from one location code to another without verification from ORM that the location code change is appropriate.

**CLAIMS COUNCIL AUTHORITY**

FARA must obtain claims council authority for the following:

- Settlement authority over \$100,000
- Appeals to the Louisiana Supreme Court

- Right to participate in a private mediation (non-OWCA) (Note: Written concurrence of DOJ Senior Counsel to the Attorney General is required.)
- Permission to proceed to trial
- Request to proceed to trial without any monetary authority (Note: Written concurrence of DOJ Senior Counsel to the Attorney General is required.)
- Request to waive a jury trial (Note: Written concurrence of DOJ Senior Counsel to the Attorney General is required.)
- Request to forego an appeal/writ.
- Waiver of greater than 50% of the State's interest in subrogation matters utilizing the appropriate Settlement Evaluation Form.
- Request to stipulate to liability (Note: Written concurrence of DOJ Senior Counsel to the Attorney General is required.)
- A "Settlement Evaluation/Claims Council Review Form" will be provided on all claims submitted for Claims Council review.
- The FARA adjuster may present the case in person or by telephone.
- If the settlement amount requires approval from the Attorney General or other parties, ORM will coordinate that approval process.

### **MEETINGS / STAFFINGS**

Requests for a staffing by the FARA adjuster are to be directed to Karen Jackson. The adjuster should attend the staffing and document the names of those who attended and the outcome of the staffing. A plan of action should state the subsequent steps that are to be taken following the staffing.

### **CLAIMS INVESTIGATION AND HANDLING**

- Three point contacts by FARA will include telephone contact with the injured worker as well as with the agency of employment and the medical provider rather than mail or email correspondence.
- On questionable claims, ORM will convene claims council upon completion of the investigation by FARA. During the claims council meeting, FARA will discuss the merits of the case.
- FARA's investigation will include obtaining a recorded statement on all lost time and questionable claims.
- Where appropriate, FARA's investigation will include surveillance on lost time and questionable claims where warranted.

### **NON-LITIGATED CLAIMS**

FARA will have the authority to settle all non-litigated claims up to and including twenty-five thousand (\$25,000) dollars per claimant without the approval of the State (ORM or DOJ).

Settlements over twenty-five thousand (\$25,000) dollars per claimant must have the approval of ORM **and** the concurrence of the Attorney General's office **prior** to negotiations with the injured worker or the plaintiff's attorney. FARA must submit a completed Settlement Evaluation Request form to ORM for approval. The ORM supervisor will review the settlement evaluation form to see if ORM agrees with FARA's recommendation for settlement of a non-litigated claim. ORM staff may consult with the handling adjuster for additional information and/or claim detail.

Workers' compensation adjusters often settle claims that are not in litigation which necessitate the AG preparing an Attorney General Settlement Concurrence Form For Non-Litigated Claims and handling the settlement documents.

Once ORM has determined a recommended amount for settlement authority, ORM will submit an Appointment and Contract Approval Form (transmittal) to the attorney general's office requesting that an attorney be assigned to obtain AG concurrence for that authority. Upon assignment, the attorney general's office will extend AG concurrence on the Attorney General Settlement Concurrence form for Non-litigated claims over \$25,000 (SF-7). When the attorney general's office has concurred on the amount of settlement authority, the attorney general's office will notify both ORM and the FARA adjuster of the concurred settlement authority. FARA can begin negotiations for an amount up to AG concurrence once the Attorney General Settlement Concurrence form for Non-litigated claims over \$25,000 (SF-7) has been received.

If the settlement cannot be concluded within the settlement authority granted, the FARA adjuster must resubmit the settlement authority request to the appropriate ORM supervisor for review of additional authority and resubmission to the attorney general's office.

If the claim is not settled by the date in the claims council form, the authority will expire and the entire process must begin again.

FARA cannot begin settlement negotiations of a non-litigated claim over \$25,000 without AG concurrence.

FARA will not generate a settlement check until it has received written AG concurrence.

FARA's requests for settlement authority must include the minimum documentation:

- Settlement evaluation form (must be completed thoroughly)
- Medical cost projection, if applicable
- LWC 1007
- MSA with CMS approval, if applicable
- Surveillance report, if applicable

- Voc Rehab report, if applicable
- Any supporting medical or other documentation.

**Process for requesting settlement authority on Non-Litigated Claims over \$25,000.**

- FARA will submit a request for settlement authority to the appropriate ORM supervisor.
- ORM supervisor reviews the request and may consult with the FARA adjuster via phone or email.
- ORM supervisor recommends settlement authority on an ORM claims council form.
- The claims council form will include a date that settlement authority is good for: i.e., MM/DD/YY and not ## days.
- ORM will notify the FARA adjuster that the recommended settlement authority is being forwarded to the AG's office to obtain AG concurrence and that no settlement negotiations are to be made with the injured worker or their representative until AG concurrence has been obtained.
- ORM will route a completed Appointment and Contract Approval Form (transmittal), the claims council form and all attachments received from FARA to the [NSF-ORM@ag.state.la.us](mailto:NSF-ORM@ag.state.la.us) email address.
- The AG's office will assign the claim to an attorney to obtain AG concurrence.
- The AG's office will notify both ORM and FARA of the settlement authority concurred to by utilizing the Attorney General Settlement Concurrence form for Non-litigated claims over \$25,000 (SF-7).
- Once the FARA adjuster receives AG concurrence, negotiations for settlement with the injured worker and/or their representative can begin.
- After FARA has successfully negotiated a settlement within the authority granted, FARA will communicate this amount to the assigned AG attorney and to ORM and request that the settlement documents be drawn.
- FARA will generate a settlement check at the request of the AG attorney.

**LITIGATED CLAIMS**

FARA will have the right to settle claims up to and including twenty-five thousand dollars (\$25,000) per claimant **after the assigned counsel has submitted an RSA to ORM for approval.** FARA will route the RSA submitted by assigned defense counsel to ORM for review and evaluation. Settlements over \$25,000 must be approved by ORM and the AG. Settlements over \$250,000 must also be approved by the Commissioner of Administration. Settlements of \$500,000 and above must be approved by the Joint Legislative Subcommittee on the Budget.

**SUIT ABANDONMENT POLICY FOR LITIGATED CLAIMS**

A new policy will be implemented on all cases that abandon **after October 1, 2013**. When a case is believed to have abandoned, defense counsel will consult with the adjuster to review relevant dates and to confirm that the delay for abandonment has indeed lapsed. If there is agreement that the case has abandoned, defense counsel will file a "Motion to Declare Case Abandoned " or "Motion to Dismiss on the Basis of Abandonment", or similar pleading between 15 and 45 days from the alleged date of abandonment. In the event the motion is granted, defense counsel will immediately inform the adjuster of all costs associated with a dismissal of the case, and will provide the adjuster with an itemization of such costs from the Clerk of Court.

Please note that La. C.C.P. Art. 5188 provides that, in the event a judgment is rendered against a party who has been permitted to litigate without the prior payment of costs (i.e., an indigent party who has prosecuted the action "in forma pauperis" pursuant to La. C.C.P. Art. 5181 et seq.), said party should be cast with all costs. This article further provides that failure of the indigent party to pay such costs shall not prevent the entry of a judgment in favor of another party. This article should be referenced within the Motion and Order/Judgment of Dismissal in the appropriate circumstance.

Cases that are currently in the possession of the Litigation Division and that have been administratively closed due to abandonment (i.e., cases that have allegedly abandoned **before October 1, 2013**) shall be reviewed by defense counsel and the corresponding Section/Office Chief to confirm (1) the date it allegedly abandoned, and (2) that there has been no waiver of abandonment. If there is agreement that the case has abandoned, defense counsel shall file a "Motion to Declare Case Abandoned " or "Motion to Dismiss on the Basis of Abandonment", or similar pleading on such cases **prior to December 31, 2013**.

### **RSA PROCESS**

All assigned defense counsel (AAG staff attorneys and contract attorneys) shall submit a RSA in accordance with the guidelines established by the Litigation Program of the Department of Justice and ORM.

RSAs prepared by an AAG should include comments from the section chief or Office Chief if the case has been assigned to a Regional Office and then routed to the FARA adjuster. The FARA adjuster will review the RSA, provide an email which includes their comments regarding the proposed settlement, a Settlement Evaluation Form (ORM), and a Claims Council Request form, then forward to the appropriate ORM Claims Supervisor for disposition. After the ORM review process, ORM's comments/recommendations and RSA and Claims Council Decision form, where required, will be emailed to the AG via Wanda Hebert at [litigationRSA@ag.state.la.us](mailto:litigationRSA@ag.state.la.us) for the AG approval process. Upon approval by the AG, they will notify FARA and ORM as to the approved authority. Settlements over \$250,000 are not final until approval has been granted by the Commissioner of Administration. Settlements of \$500,000 and above are not final until approval has been granted by the Joint Legislative Subcommittee on the Budget. ORM

will coordinate these approvals. No further action for settlement will be taken by FARA until all required approvals have been obtained.

RSAs prepared by contract counsel will be sent to the assigned FARA adjuster. The FARA adjuster will review the RSA, provide an email which includes their comments regarding the proposed settlement, a Settlement Evaluation Form (ORM), and a Claims Council Request form, then forward to the appropriate ORM Claims Manager for disposition. After the ORM review process, ORM's comments/recommendations and RSA and Claims Council Decision form, where required, will be emailed to the AG via Wanda Hebert at [litigationRSA@ag.state.la.us](mailto:litigationRSA@ag.state.la.us)) for the AG approval process. Wanda Hebert will notify FARA and ORM as to the approved authority. Settlements over \$250,000 are not final until approval has been granted by the Commissioner of Administration. Settlements of \$500,000 and above are not final until approval has been granted by the Joint Legislative Subcommittee on the Budget. ORM will coordinate these approvals and notify FARA accordingly. No action for settlement will be taken by FARA until all required approvals have been obtained.

### **1008 DISPUTED CLAIMS RECEIVED ON WORKERS' COMPENSATION CLAIMS**

- All OWCA citations (1008) and supplemental/amending petitions must be referred to ORM for referral to the AG for defense counsel assignment.
- All petitions for damages filed against the third party in subrogation matters must be referred to ORM for referral to the AG for an attorney assignment to file an intervention to protect the State's interest.
- When an OWCA citation (lawsuit) is received by FARA, the litigation screen in ICE must be updated to reflect litigation status.
- ORM will complete the required Appointment and Contract Approval Form and submit it to the AG for appointment of counsel.
- The FARA adjuster will receive a copy of the appointment form from ORM Contracts for their records. Legal reserves should be initially set at \$20,000.
- Upon notification of the assigned defense counsel, the FARA adjuster should contact counsel within seven (7) working days to discuss the case and develop a plan of action for defending the allegations contained in the petition.

### **DEFENSE COUNSEL ASSIGNMENT OF LITIGATED CLAIMS**

- OWCA disputed claims (LWC 1008) received by FARA must be sent to ORM so that proper recording of the citation may be done.
- ORM will complete the required "Appointment and Contract Approval Form" and submit it along with a copy of the disputed claim to the AG for appointment of counsel.
- AG appointments to contract counsel will require concurrence of the ORM Assistant Director for Litigation Management and the State Risk Director.

- A copy of the appointment will be provided to the FARA adjuster.

### **LITIGATION DIARY**

Litigated claims must be maintained on a continuous diary to obtain reports from the defense counsel defining the status of the litigation and the plan for resolution of the litigation. At a minimum, the FARA adjusters should establish diary dates for the following:

- Initial Case Assessment – 60 days from date of counsel acceptance/assignment
- Six Month Case Assessment – 180 days from date of counsel assignment
- Sixty (60) Days Prior to Trial – RSA due from assigned counsel

### **LITIGATED SETTLEMENTS AND JUDGMENTS**

- All litigated settlements must be approved by ORM and the AG.
- Settlement requests above \$250,000 require approval by ORM, the AG and the Commissioner of Administration.
- Settlement Requests of \$500,000 and above require the approval of ORM, the AG, the Commissioner of Administration and the Joint Legislative Subcommittee on the Budget.

### **CATASTROPHIC CLAIMS**

Immediate notification by telephone to the ORM Claims Administrator shall be made in all cases involving catastrophic injuries or fatalities.

### **CLAIM DENIALS**

When it is determined that the State has no liability for a loss, FARA will discuss the denial with the appropriate ORM workers' compensation supervisor prior to issuing a letter of denial to the claimant. In the event that a denial is appealed, the FARA supervisor on the case will review all applicable documentation and issue a supplemental letter to the claimant advising them of the final decision.

### **NOTIFICATIONS AND ATTENDANCE AT TRIALS AND MEDIATIONS**

FARA must maintain a calendar of all scheduled mediations and trials. The FARA adjuster must notify ORM thirty (30) calendar days prior to any scheduled mediation or hearing before the OWCA. ORM shall be notified of all trials.

**FARA adjusters must attend trials and mediations, as well as meetings of the Joint Legislative Subcommittee on the Budget.**

### **MEDIATION SUMMARY**

A mediation summary documenting the offers and demands, initial settlement authority and final settlement amount along with an evaluation of defense counsel should be attached to the file. A copy of the format will be provided to FARA.

### **CLIENT AUTHORITY PAYMENT REQUESTS OVER \$25,000:**

Client authority approval is required for all payments over \$25,000.

- Documentation for the payment should be attached to each client authority request.
- Each client authority request shall be sent to the appropriate workers' compensation supervisor for action.
- If the Client Authority Request is above their authority, it will be routed it to the appropriate person within ORM for approval.

### **RESERVES**

Initial reserves must be established within seven (7) calendar days of the receipt of the claim. Initial reserves are to be reviewed within 60 days after receipt of the claim as more is known about the claim.

ORM reserve authority is needed to increase reserves with a total incurred reserve of \$100,000 or greater. Subsequent reserve increases shall require approval by ORM. Email requests for reserve approval should reference "**reserves**" in the subject line.

Reserve requests shall be sent to appropriate workers' compensation personnel for action. If the reserve request is above their authority, they will route it to the appropriate person within ORM for approval. Reserve requests shall include reasons for the increase. Reasons for changes to reserves shall be placed in the claim management system.

**ORM reserve authority is not required for the following reserve changes nor should these be included on the monthly reserve report:**

- **A decrease in the reserve where the total incurred is over \$100,000.**
- **Funds are shifted from one reserve category to another, but the total incurred amount is unchanged.**
- **Reserve adjustments/reallocations that occur within the same month that results in no change to the total incurred amount.**

## **RETROSPECTIVE RESERVE AUTHORITY**

There will be instances when it will be necessary for FARA's ICE system to automatically generate reserve increases to accommodate certain transactions. This includes system generated and/or la ORM operator reserve changes. It will be necessary for FARA to obtain retrospective reserve authority in these situations.

At the end of each month, FARA will prepare a Generalized Claim Export for Reserves. No later than the 10<sup>th</sup> day of the month following the month of the increase, FARA will seek retrospective approval for reserve changes they have identified where the total incurred amount exceeds \$100,000 and ORM approval was not obtained. See exceptions noted above in bold. Individual requests noting justification for the increase must be submitted to ORM and should include the date the reserve was changed, and should request retrospective approved by ORM.

For System Generated Reserve changes on claims that are "closed", the adjuster shall reopen the claim, review the claim documentation and appropriateness of reserves, and submit a separate email requesting reserve authority if the total incurred is over \$100,000. Note, when the file was closed reserves were reduced to the total paid. Therefore, when the claim is reopened, new reserves must be established.

For System Generated Reserve changes on "open" claims, ORM will grant blanket retrospective authority for those claims listed on the respective monthly report. This retrospective authority shall be noted by FARA in each of the retrospective claim files identified. Additionally, it is expected that the assigned adjuster will review the claim to determine appropriate reserves and request updated authority to avoid future deficiencies

## **RESERVATION OF RIGHTS FOR EMPLOYERS' LIABILITY CLAIMS:**

Reservation of Rights letters must be discussed and approved by ORM prior to sending. When it has been determined that there are allegations in a lawsuit that are not covered under the policy, a reservation of rights letter must be sent to the following persons advising them as to the reason for non-coverage:

- The "head" of the insured state entity, agency or department named as a defendant in the petition or complaint
- Also, any individual state employee named as a defendant in the petition or complaint
- A courtesy copy should be sent to the general counsel of the state entity, agency or department named as a defendant in the petition or complaint.
- A copy should be sent to the assigned defense counsel.

The reservation of rights letter should be sent out no more than thirty (30) days from receipt of the new lawsuit. The FARA adjuster will draft the reservation of rights letter and submit it to ORM for approval prior to it being sent to the involved party. The

reservation of rights letter must be sent by certified mail, return receipt requested. The FARA Supervisor will establish a diary system to confirm that the signed return receipt is returned and attached to the ICE file.

## **SUBROGATION**

FARA must ensure that the State's subrogation interest is protected on all claims.

Filing of suit to interrupt prescription or filing of suit to recover the State's interest should be requested by the FARA adjuster at least ninety (90) days prior to prescription.

All requests for the appointment of an AAG staff attorney to handle a workers' compensation subrogation matter will be submitted to the appropriate ORM workers compensation supervisor along with a Subrogation Summary. ORM will prepare the Appointment and Contract Approval Form and submit it to the AG for assignment. AG will notify FARA and ORM as to the name of the appointed attorney/law firm.

Authorization to waive less than 50% of our subrogation interest on workers' compensation claims can be obtained from the designated workers' compensation staff member as noted in the above section titled ORM Internal Authority Designation. Authorization to waive more than 50% of our interests must be submitted to the ORM claims council utilizing the Subrogation Settlement Evaluation Form.

**For all other lines of coverage where subrogation is involved, request for authorization to waive more than 50% of our interest (this would be submitted in the form of an RSA) and request for the appointment of an attorney to pursue/protect our subrogation lien should be directed to Farrel Hebert at [farrel.hebert@la.gov](mailto:farrel.hebert@la.gov).**

When 100% of the State's lien has been recovered and there are no further claim activities or litigation, the FARA adjuster should close their file. There is no need to involve the Office of the Attorney General for completion in these instances.

## **CONTRACTS FOR EXPERTS**

When the assigned defense counsel and/or an adjuster requests an expert, the adjuster shall have the request for "Contract Expert/Consulting Services" form completed (signed by the adjuster, FARA supervisor and defense counsel) and returned to the ORM Contract Reviewer, Deborah Grand at [Deborah.Grand@la.gov](mailto:Deborah.Grand@la.gov). Ensure that the Curriculum Vitae, Fee Schedule and W-9 are attached. ORM Contracts will prepare the contract, obtain approval, and then route a copy to the FARA adjuster. When the contractor has concluded his assigned tasks and their services or no longer needed, or upon expiration of the contract, the adjuster shall complete a Contract Performance Evaluation Form and submit it to [Deborah.Grand@la.gov](mailto:Deborah.Grand@la.gov).

The FARA adjuster will provide:

- Expert's W-9
- Expert's name and company name
- Expert's address, city, state, and zip code
- Expert's phone and fax numbers
- Expert's Curriculum Vitae
- Expert's Social Security Number or TIN #
- Expert's Fee Schedule
- Amount of contract, and effective date
- Scope of Services
- If a potential expert is employed by a college or university, a PM 11 form is required, which grants permission from the college or university for the expert to handle private work.

### **CONTRACT AMENDMENTS (Revised 11/20/12)**

DOJ/Office of the Attorney General Staff: The Office of Risk Management has an Interagency Agreement between ORM/DOJ for the legal services provided by the Office of the Attorney General. It will not be necessary for FARA to request any amendments for legal services performed by DOJ/Office of the Attorney General/Litigation Program. FARA adjusters do need to monitor billings for excessive charges and make sure that they have proper documentation in their files.

Contract Counsel – Contract counsel is appointed by the AG and concurred upon by ORM. A Contract for Professional Services is executed between ORM and the respective law firm/attorney. Amendments will be necessary when the initial contract has been exhausted or when it is expected to exceed the initial amount. The initial contracts to defense counsel are normally issued in the amount of \$20,000. So, it isn't uncommon to receive an amendment request along with the initial case assessment. Contract counsel must submit a budget in Acuity that will need to be approved by the FARA adjuster. Approval of a budget in Acuity DOES NOT eliminate the need for the adjuster to submit a written request for a contract amendment.

Since contracts are issued by ORM, we will need **written email requests for amendment requests up to \$199,999.99** in the following format along with a copy of the budget and a current case assessment (if complex or if the amendment request is over \$100,000.01):

RE: Request for Contract Amendment  
Contract Number:  
Claimant:  
ORM Claim Number:  
FARA Claim Number:  
Contractor:  
Current Contract Amount:

Requested Contract Amount:

The first paragraph should be a brief description of the loss and what legal action has been accomplished.

Second paragraph should include additional action required as well as note critical dates (hearings, trial date, etc.).

Third paragraph should include the amount of monies paid by ORM towards the defense of this claim on the current contract, the total amount of outstanding invoices, and a statement recommending that the contract be increased from \$ \_\_\_\_\_ to \$ \_\_\_\_\_.

The adjuster will route this email to the respective ORM supervisor/manager for approval. If in order, the ORM supervisor/manager will approve it and forward the approved request to the ORM Contract's Unit for processing with a copy to FARA.

For contract amendment requests **\$200,000 and above, a Memorandum is required** which will be a Microsoft Word document that can be revised. The format will be as follows:

FARA Letterhead  
Font will be Verdana 12 point  
Modified Block style  
Justified

**MEMORANDUM** is uppercase, bold, underscored and centered  
Justified paragraphs

TO: J. S. "Bud" Thompson, Jr  
State Risk Director

FROM:

DATE:

RE: Request for Contract Amendment  
Contract Number:  
Claimant:  
ORM Claim Number:  
FARA Claim Number:  
Contractor:  
Current Contract Amount:  
Requested Contract Amount:

The first paragraph should be a brief description of the loss and what legal action has been accomplished.

Second paragraph should include additional action required as well as note critical dates (hearings, trial date, etc.).

Third paragraph should include the amount of monies paid by ORM towards the defense of this claim on the current contract, the total amount of outstanding invoices, and a statement recommending that the contract be increased from \$ \_\_\_\_\_ to \$ \_\_\_\_\_.

APPROVED BY:

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J. S. "Bud" Thompson, Jr.  
State Risk Director

Date

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Joseph M. Roussel  
Assistant Director for Litigation Management

Date

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Ann D. Wax  
State Risk Administrator - Claims

Date

Please try to keep the memorandum to two pages. A copy of the Acuity budget and a current case assessment should be included along with the amendment request.

This memorandum should be directed to Ann Wax for review. If in order, she will obtain the required signatory approvals and route to the ORM Contract's Unit for processing.

**APPROVAL LEVELS FOR CONTRACTS**

Amount of Contract                      Approval Required

\$ 0 - \$100,000                      Claims Supervisor

\$100,000.01 - \$199,999.99              Claims Manager

\$200,000 and above

State Risk Administrator – Claims, Assistant Director  
for Litigation Management, State Risk Director, and  
Commissioner of Administration

### **CONTRACT PERFORMANCE EVALUATION FORMS (CPES)**

Contract Performance Evaluations are statutorily required therefore contract performance evaluations must contain all information required by the Louisiana Administrative Code, Title 34, Part V, Appendix F and Louisiana Revised Statute Title 39:1500. Adherence to these laws and guidelines are addressed in the agency’s audits. Completion of this form is **required at the conclusion of the case or upon expiration of the contract**. This form shall be completed on all cases wherein defense counsel was assigned and/or where an expert was obtained under contract; even if no money has been spent on the contract. This includes AAG in-house attorneys. When outside defense counsel has been assigned, TrialNet/Acuity will send the assigned adjuster a notice of contract expiration 90/60/30 days prior to the expiration date of the contract.

Actual Amount Paid – the total amount paid under this contract.

Contract Amount – current amount of contract

Hourly Rate of Pay – note rates per contract – i.e., regular rates or increased rates

Actual Begin and End Dates – date of the first and last billing entries

Number of Contract Amendments and Reasons: information will be input by  
ORM Contracts Unit.

Description of Services: Check off appropriate box

Deliverable Products: Monthly and Quarterly Reports

Remaining questions on form are self-explanatory.

Adjuster and their supervisor sign and date form. Then route the signed form to  
appropriate workers’ compensation supervisor.

### **CONTRACT PERFORMANCE EVALUATION FORMS (CPES) – AG STAFF ATTORNEY**

ORM has an Interagency Agreement with DOJ – Office of the Attorney General –  
Litigation Program. The following questions will be left blank on the CPE for AG staff  
attorneys.

The contract Review #

Contract No.

Contract Amount

Hourly Rate of Pay

Contract Begin and End Dates

Actual Begin and End Dates

Number of Amendments

The remainder of the questions should be completed.

Contractor Name will be the name of the AG attorney – DOJ/AG – Litigation Program. All other questions asked should be self-explanatory.

It is the responsibility of the FARA adjuster to complete the Contract Performance Evaluation form and forward to the appropriate ORM supervisor for further handling.

**The contract performance evaluation form is also used to request contract renewals before the expiration of the 3 year attorney contract.**

### **DEFENSE COUNCIL BILLING**

- Most defense attorneys will submit their invoices through Acuity.
- **Acuity** contact person is Lucille Gautreaux at [Lucille.gautreaux@la.gov](mailto:Lucille.gautreaux@la.gov), (225) 342-1517.

### **MEDICARE SET ASIDES (MSA)**

When paying the value of a Medicare Set Aside (MSA), if the amount of the MSA exceeds **\$25,000**, the amount must be structured with an annuity.

All vendor assignments for structured settlements and annuities must be obtained from the ORM.

The annuity quote must include language that any unused funds will revert back to the State upon the claimant's death.

### **CENTERS FOR MEDICARE & MEDICAID SERVICES (CMS) APPROVAL**

The following information is taken from the CMS Information Memorandum dated May 11, 2011.

An MSA meets CMS' criteria for review when the following thresholds are met:

- The claimant is currently a **Medicare beneficiary** and the total settlement amount is **greater than \$25,000; OR**
- The claimant has a "reasonable expectation" of Medicare enrollment **within 30 months of the settlement date** **and** the anticipated total settlement amount for future medical expenses and disability/lost wages over the life or duration of the settlement agreement is expected to **be greater than \$250,000**.

CMS does not review MSA proposals if the above thresholds are not met.

CMS requires approval of all \$200,000 and above where the injured worker is also a Medicare recipient.

CMS may or may not review an MSA under \$200,000. Therefore, we would not want to delay any settlement for those under \$200,000.

### **JONES ACT CLAIMS**

Certain employees may fall under the Jones Act, a federal statute with regards to seamen injured on the job. Pursuant to the U. S. Supreme Court's failure to grant writs in the Desi Fulmer (3042274) claim, some state on-the-job accidents will be handled under the Jones Act. Section 13.1 of the Statement of Works portion of ORM's contract with FARA requires the contractor to handle these claims in accordance with the Jones Act based on judicial review.

FARA will begin handling new claims that meet the Jones Act criteria as a Jones Act claim and not as state workers' compensation claims.

FARA will **identify** and **convert** applicable workers' compensation claims that fall under the Jones Act so that they can be handled as Jones Act claims.

Accidents that meet the following Jones Act requirements will be handled as Jones Act:

1. The employee is a crew member of a partially navigable vessel (a floating means of transportation).
2. The employee must aid in the navigation or well-being of the vessel.
3. The employee must have some permanent connection with the vessel.

**NOTE: Seamen who are injured away from the boat but who are still in course and scope of employment are still subject to the Jones Act.**

**Jones Act jurisprudence recognizes "*Once a seaman, always a seaman.*"**

State agencies with employees who are subject to the JONES ACT include the following: Employees of the **Department of Transportation and Development (DOTD)** who are

1. Members of a ferry boat crew
2. Employees of Crescent City Connections
3. Employees who work on/under bridges and carry a small boat.

Employees of the **Department of Wildlife and Fisheries (DWLF)**:

1. Wildlife fur and refuge employees
2. Some game wardens
3. Most aquatic hyacinths workers
4. Some biologists and researchers.

Employees who work on water **30% or more** of their time may be classified as a seaman.

Employees who are subject to the Jones Act statute will be compensated with *maintenance* and *cure*.

1. **Maintenance** is the cost of lodging and food paid at a rate of **\$25.00** per day, no exceptions.
2. **Cure** is the cost of medical care. Medical invoices are paid at **100%** of the billed amount.
3. A third party administrator may review medical invoices for the reasonableness of the charges.

Because of the specialty of Jones Act claims handling, ORM requests that there be one designated adjuster to handle all Jones Act claims.

### **DISABILITY RETIREMENT OFFSET CALCULATIONS**

R. S. 23:1225(C)(3) allows an employer to take a credit (reduction in benefits) for the amount that the employer pays towards the injured worker's retirement benefits. The credit taken should be in proportion to the employer's contribution to the injured worker's retirement benefits.

When a State of Louisiana employee is receiving both workers' compensation lost time benefits under the Louisiana Workers' Comp Act and Disability Retirement benefits, it will be necessary for the FARA adjuster to calculate the disability retirement offset using the guidelines below.

Steps the adjuster must take:

1. Send an email request to the appropriate ORM supervisor to obtain an employer/employee contribution history from the appropriate retirement system.
2. The ORM supervisor will forward the retirement information to the FARA adjuster once it is received from the retirement system.
3. The FARA adjuster will request an actuarial study once the employer / employee contribution history has been received from ORM.
4. When the actuarial study is received, reduce the benefits using the following criteria:
  - a. Multiply the monthly disability retirement amount times 12 months.
  - b. Divide the product by 52 weeks to get the disability retirement benefit per week.
  - c. Multiply the disability retirement benefit per week times the actuarial percentage to obtain the allowable credit amount.

- d. Subtract the allowable credit amount from  $66\frac{2}{3}\%$  of the average weekly wage (AWW) to obtain the new comp rate. It does not matter if the reduction takes the new comp rate below the maximum comp rate.
5. Adjust the indemnity benefit record in ICE.
6. Attach a calculation worksheet to the file in ICE to show the step by step calculation process.
7. Notify the injured worker, the injured worker's attorney if represented, OWCA, and the agency with a new LDOL 1002 form.

**DISABILITY RETIREMENT OFFSET CALCULATION SAMPLE:**

Assume the injured employee had a salary of \$5000 at the time of the accident on October 1, 2013 and this is what the AWW is based on. In the sample below, assume that the AWW is \$1153.85.

Monthly Disability Retirement benefits are \$2100. The actuarial study shows that the employer contributed 54% towards the employee's retirement benefits. The percentage will vary per employer.

1. \$2100 (Monthly Disability Retirement benefits)  
 $\frac{\times 12}{= \$25,200}$  (Yearly disability retirement benefits)
2. \$25,200 (Yearly disability retirement benefits)  
 $\frac{\div 52 \text{ weeks}}{= \$484.62}$  (Weekly disability retirement benefits)
3. \$484.62 (Weekly disability retirement benefits)  
 $\times .54\%$  (sample actuarial employer contribution)  
 $= \$261.70$  (This is the credit that the employer is entitled to take)

**Note:** The contribution percentage will vary per employer and per employee.

**Note:** Once a contribution percentage is known for an employer, do not assume that this is the percentage to be used for all employees for that agency. Always obtain an individual actuarial study for each injured worker.

4. \$1153.85 (AWW)  
 $\times .6667$   
 $= \$768.71$  (This is the amount the employer's credit is taken from. Do not worry about the maximum comp rate at this point)
5. \$768.71 (This is the amount the employer's credit is taken from).  
 $\frac{-\$261.70}{\$507.01}$  (The credit that the employer is entitled to take)  
 $\$507.01 =$  the new comp rate (this figure is subject to the maximum comp rate).

If the injured worker is an extremely high wage earner, once the calculations have been completed, the maximum comp rate would apply at that time.

The injured worker is still entitled to a total of 520 weeks of benefits.

**NOTE: Once the injured worker reaches age 60, the retirement system will automatically convert retirement benefits from disability retirement benefits to regular retirement benefits. Accordingly, the reduction STOPS at age 60.**

**To be safe, always verify with the retirement system that benefits have been converted.**

**When the injured worker reaches age 60, indemnity benefits must be restored to the original comp rate unless other reductions apply.**

**Failure to stop taking the reduction when the disability retirement benefits are stopped or converted to regular retirement will result in an underpayment of benefits and thus is subject to penalties and attorney fees.**

#### **LIST OF LOUISIANA RETIREMENT SYSTEMS**

- Louisiana State Employees Retirement System (LASERS)
- Teachers' Retirement System Louisiana (TRSL)
- State Police Retirement System
- Firefighters' Retirement System
- Louisiana School Employees' Retirement System