

(Revised 10/01/2014)

Client Instructions – Transportation Claims

ORM INTERNAL AUTHORITY DESIGNATION:

Tom Bluff will be the primary contact person on all Transportation Claims, including Aviation and Wet Marine claims. He will be responsible for handling the RSA process, approval of payments in excess of \$25,000, request for an attorney appointment, request for a contract amendment, and request for reserve increases. If the requested matter is above his authority level, he will route it to the appropriate person within ORM. Please copy Farrel Hebert on all emails to Tom Bluff. If Tom is out of the office, Farrel will handle your requests. Contact information is as follows:

Tom Bluff – (225) 342-8466 – Thomas.Bluff@La.Gov

Farrel Hebert – (225) 342-8424 – Farrel.Hebert@La.Gov

GENERAL

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.

TRANSPORTATION CLAIMS HANDLING GUIDELINES:

The 4-digit Location code should be site specific. For example, Use the code for Troop A, rather than the code for the Department of Public Safety. Use the “L” number that corresponds to the facility, not the “S” number.

- Personal or telephone contact by the FARA adjuster must be made with the claimants on all cases within one (1) business day of receipt of the claim.
- Contact by mail will suffice only in those instances where personal or telephone contact is not possible.
- Medical releases and copies of all pertinent medical records should be requested and evaluated by FARA.
- Personal or telephone contact must be made with the agency personnel having knowledge of the claim within two (2) business days following receipt of the claim.
- FARA adjuster shall send contact information and FARA claim number to agency personnel via email for future communications.
- Recorded statements must be taken from the claimant and all witnesses in all cases where there is injury or where liability is questionable. Reasons for not obtaining a recorded statement must be explained in the claim file notes.
- Police reports and B.A.C. test results will be obtained when appropriate.

- FARA will report all bodily injury claims to ISO/the Index Bureau, as soon as possible and make repeat queries on long term claims to identify accidents that may have occurred after the subject claim.
- FARA will utilize economic experts when necessary to evaluate economic damages and will retain other experts as needed to properly defend and evaluate the claim.
- The State will contract with the experts identified by FARA and/or the assigned defense counsel.

AUTO LIABILITY CLAIMS:

- A DA-2041(See exhibit #1) for Auto Liability and Auto Physical Damage claims or a DA-2073 (See exhibit #2) for third-party windshield claims is to be completed and submitted to FARA. DPS State Police will submit a “Fleet Crash Message” (See exhibit #3) in place of the DA-2041.
- The FARA adjuster will use the proper location code, coverage, cause code, etc.
- FARA will obtain copies of the claimant vehicle’s Registration and a copy of the liability insurance “Declarations” page to ensure that it is compliant with State law requiring minimum limits of liability coverage. It will be necessary to contact the broker directly to confirm that the insurance information is current through either a phone call, fax or e-mail to be documented in ICE.
- The uninsured claimant driver/owner will be barred from recovering the first \$15,000 of bodily injury and the first \$25,000.00 of property damage. See R.S. 32:866, (See exhibit #4).
- Proof of insurance is not required on claimant vehicles that are legally parked when struck by a State vehicle.
- An injured guest passenger will not be barred from making a bodily injury claim even if the driver/owner is uninsured.
- Claimant non-drives are to be moved to a repair facility and arrangements made for an appraisal of damage as soon as possible.
- An independent damage appraisal is to be done when damages are greater than \$2,500. If no injury is involved and the estimated damage is below \$2,500 it will not be necessary to obtain an independent appraisal. In those instances, two body shop estimates will suffice. Payment will be made per the lower estimate.
- Adjusters will have authority to assign independent appraisals below the \$2,500 damage threshold when the adjuster questions that the damage claimed is legitimate or when the independent damage appraisal will provide other information needed in adjusting the claim.
- FARA will arrange for claimant car rentals during the period of time the claimant vehicle is not driveable and repairs are underway (allowing time for ordering parts). If the claimant vehicle is determined to be a total loss, rental is to be provided for up to three (3) additional calendar days after a legitimate settlement offer has been made. This is intended to allow the claimant adequate time to purchase a replacement vehicle. Additional rental may be allowed if it is a necessary to control the outcome of a larger bodily injury claim. These exceptions should be reviewed and approved by FARA’s Transportation supervisor and documented in the claim file.

- Total losses are to be moved to Copart as soon as the vehicle is determined to be a total loss. Contact with Copart is with Brian Daniels @ 615 766-0159. His e-mail address is Brian.Daniels@Copart.Com.
- When a State employee is driving a personal vehicle on State business, the State's liability coverage will be excess to the employee's personal auto policy. FARA will obtain a copy of the declarations page to the employee's personal auto liability policy, as well as the vehicle registration. Should the personal auto liability limit appear to be adequate, the matter may be handled as a "Reporting Purposes Only" file. If the employee's personal auto limits appears to be inadequate, FARA should create a claim at the onset to consider the excess exposure. Adjuster to obtain written confirmation from the agency stating that the employee had permission to use his/her personal vehicle for State business.
- Enterprise will be responsible for physical damage and liability claims arising from the use of Enterprise vehicles by State employees while conducting State business. In those instances, a DA-2041 is to be submitted for "Reporting Purposes Only".
- Per R.S. 9:2798.4 the claimant is precluded from recovery in certain instances when the claimant driver is impaired. (See exhibit #5).
- Third party vehicle damage claims for "glass only", such as debris flying off of a licensed state vehicle onto a passing or following vehicle, are to be submitted by the agencies on either a DA-2041 or a DA2073 (Vehicle Glass Repair/Replacement Loss Notice) directly to FARA at Claimopening@Fara.Com.

AUTO PHYSICAL DAMAGE CLAIMS:

- Contact is to be made with the State agency who has reported an Auto Physical Damage claim within 1 business day of receipt of the claim.
- Auto Physical Damage claims are to be maintained on a 30-60 diary to follow up for timely payment and resolution.
- An appraisal is done to establish the value of a State vehicle that is deemed to be a total loss. A salvage value is determined by obtaining (3) salvage bids. The highest bid will be deducted along with the \$1000 deductible when payment is made to the agency.
- Payment of cost of repairs to a State vehicle will be made after the work has been completed per invoices submitted. Payment is usually made directly to the repair facility. An exception can be made when an agency seeks reimbursement for repairs they have paid.
- Agency in-house repair facilities that do the work themselves must be approved by ORM before any repairs are undertaken.
- No agency employee labor cost incurred in the repair of a State vehicle will be considered. Material costs for parts, supplies and shipping expenses are reimbursable if an itemized worksheet with related invoices is submitted. Only state employees who possess experience in auto repairs should be engaged in the repair of state vehicles. The privilege of a state agency to do its own repairs may be revoked if substandard repairs are recognized by ORM.
- The State is exempt from paying Sales tax. (Exhibit 6)

- If a State vehicle is deemed a total loss, the agency is notified and they in turn notify LPAA, Louisiana Property Assistance Agency, to have the vehicle moved to their storage facility. The contact person at LPAA is Rick Janus @ 225-342-3455. An exception will be made with vehicles that are flooded as a result of a Hurricane. In those instances salvage may be disposed of through Copart.
- A Proof of Loss is required on all Total Loss vehicles.
- If the vehicle is drivable, the agency should secure two repair estimates. If the vehicle is not drivable, FARA may secure an independent appraisal and forego the need for shop estimates. If the vehicle is more than two years old, repairs should include the use of reconditioned parts. Should these not be readily available, aftermarket parts should be used. An exception will be made when a new part is necessary to maintain the mechanical safety of the vehicle. If the vehicle is at least five years old and the repairs exceed \$1500.00 or the vehicle is three to five years old and the repair estimate exceeds \$5000.00, FARA must be contacted before any repairs begin to determine the feasibility of repairing or totaling the car.
- Per Title 37, Subsection 709-J of the Louisiana Administrative Code, **Reporting of State Automobile Liability and Physical Damage Claims**, "If repair or replacement of a state vehicle is not completed within 12 months of the loss date, or if approval is not obtained from the Commission of Administration within the same period of time for expenditure of insurance proceeds for some other purpose, the claim file will be closed".
- Collision Deductible Assistance will be extended when an employee sustains a collision loss while operating a personal vehicle on State business, ORM will reimburse the employee's deductible up to \$1000 once documentation confirms a collision claim is being pursued by the employee. If damage to the personal vehicle is less than the deductible, ORM will reimburse the employee for the amount of the repairs, not to exceed \$1000. If the employee does not carry collision, we will pay for the repairs not to exceed \$1000. This reimbursement provision only applies to collision losses.

AIRCRAFT CLAIMS:

- Aircraft losses are to be reported via the "Aircraft Incident/Accident Statement" form (See exhibit #7) located on ORM's website.
- Coordination should be made with Larry Kidwell, Director of La. Aircraft Services (225) 359-9836.
- Depending on the extent of the damage, the aircraft may need to be moved to a repair facility, i.e. DPS aircraft and helicopters are to be moved to **Arrow Aviation** in Broussard, La.; La Tech. aircraft to Hampton Aviation Mena, Arkansas. Contact Sam Wallace at La. Tech. 318 257-2769.
- The repair facility selected will need to be approved by Larry Kidwell, be FAA approved and be a manufacturer approved service center.
- A \$1,000 deductible will apply to all Aircraft losses.

WET MARINE CLAIMS HANDLING:

Wet marine losses involve ferries and marine vessels over 26 ft. in length.

- Liability claims for persons injured while being transported via ferry are reported on the “Passenger Injury Report (Ferry)” form. (See exhibit #8).
- Vehicles damaged while being transported via ferry will be reported via the “Private Vehicle Report (Ferry)” form. (See exhibit #9).

Both ferry forms are located on FARA’s website. Handle automobile damage and passenger injuries just like any other third party claim.

- First-party Hull Damage claims and Hull Liability claims are to be reported on the “Report of Marine Vessel Accident”, DA-WM1 form, located on ORM’s website. (See exhibit #10).
- In cases of hull damage, the adjuster will use a pre-approved marine surveyor to establish the scope and cause of damage and the estimated cost of repair.
- A \$1,000 deductible will apply to all Wet Marine Hull claims.

HANDLING OF DEPARTMENT OF PUBLIC SAFETY CLAIMS:

- FARA will assign all DPS claims to a designated adjuster.
- An OLA Assignment Form will be submitted by DPS attorneys in the Office of Legal Affairs. This form will list the name and contact information for the DPS-OLA attorney. A copy will be provided to the FARA adjuster.
- This form is returned to DPS-OLA with the name of the adjuster and the assigned defense counsel.
- In addition, the FARA adjuster and the assigned defense counsel will communicate with the assigned DPS-OLA attorney and keep them apprised of developments in the case.
- All settlement requests for litigated tort claims with State Police must include comments and either approval or rejection of settlement proposal from the assigned attorney at Legal Affairs, DPS.
- FARA will be notified in writing of the authorized settlement authority. If the settlement amount requires approval from the Attorney General or other parties, ORM will coordinate that approval process and notify FARA of the final settlement authority.
- FARA adjuster must solicit input from the DPS-OLA attorney when considering the disposition of all litigated State Police claims.

HANDLING OF DOC-ARP CLAIMS:

- Inmates who make bodily injury claims while occupying state vehicles must proceed through the Administrative Remedy Procedure (ARP), per RS 15:1171.

- The adjuster shall check with Swaantje Hoffman at Corrections, 225 342-6782 SHoffman@Corrections.State.La.Us to determine if a file has been opened and if so, obtain a copy for the claim file.
- Inmates must file a claim within ninety days of the incident, otherwise the claim is prescribed. Furthermore, the administrative remedy must be exhausted before suit is filed.
- The inmate files step one at the local institution and a decision is rendered at that point.
- If the claim is denied at the local level, the inmate must appeal to the second level and then Headquarters can either uphold the initial denial or refer it to FARA for review and recommendation.
- If FARA reviews the ARP file and determines that the claim is without merit, they will write to headquarters with their recommendation and then Headquarters will send the second denial letter.
- At this point, the inmate can file suit. If the adjuster determines that the claim has merit, he/she will discuss with Correction's in-house legal to value the claim.
- FARA must discuss all bodily injury claims, including inmates and third parties, with either attorney Susan Griffin 225 342-6743 or Debra Rutledge 225 342-6743 before any settlements are made.

NON-LITIGATED CLAIMS, EXCLUDING DPS AND DOC:

- FARA has authority to settle all claims up to and including twenty-five thousand (\$25,000) per claimant without State approval (ORM or DOJ).
- On Settlements over twenty-five thousand (\$25,000) per claimant, FARA must submit a Settlement Evaluation/Claims Council Review Form (See exhibit #12) to ORM for approval prior to extending the settlement.
- The Attorney General Settlement Concurrence Form for Non-Litigated Claims must be approved by the AG and attached to the FARA claim file before a settlement check request can be approved by ORM.
- Settlement of claims for DPS and DOC is covered in another section of the client instructions as authority to settle cases for these departments differs from the norm.

CATASTROPHIC CLAIMS:

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

RESERVATIONS OF RIGHTS:

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.
- Finally, 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.

Following are the two forms for the reservation of rights letters that should be utilized:

FORM A

This form is to be used when the primary claims asserted in the petition/complaint sound in tort. This letter provides the option of the defendant allowing the AG/ORM appointed counsel to defend all claims asserted (in this instance, the non-tort allegations are incidental to the tort demands).

Date:

(Agency/employee)

RE:

Dear _____ :

FARA Insurance Services is the third party administrator for the State of Louisiana, Office of Risk Management. We are in receipt of the above-referenced lawsuit, in which you are a named defendant. In review of same, please be advised that the Office of Risk Management provides a policy of liability coverage that was in force at the time of the alleged incident. While there are certain allegations contained in the petition/complaint that obligate ORM to defend and potentially indemnify you, other allegations contained in this pleading, and claims asserted therein, are not covered by any liability policy provided by ORM.

ORM provides coverage (defense and potential indemnification) for tort claims only. It does not provide coverage for claims of declaratory, injunctive or other equitable relief, claims for back pay, front pay, loss of overtime or employment benefits, punitive or exemplary damages, civil penalties, contractual or quasi-contractual claims and other matters. Any money judgment rendered against you on the basis of such claims would be your sole responsibility.

The Attorney General, with ORM's concurrence, will appoint legal counsel to defend the asserted tort claims.

With respect to claims in tort, ORM does not provide coverage for intentional acts, or for acts resulting in injury that is expected or intended from the standpoint of the insured. Additionally, coverage is not provided in the event any alleged tortious conduct is found to have been outside the course and scope of employment with the state. The Office of Risk Management will defend you with respect to such tort claims. However, in the event any alleged wrongful conduct is found to be intentional, or found to be outside the course and scope of employment with the state, you may receive no indemnification pursuant to the terms of the policy. Thus, any money judgment rendered against you under these circumstances would be your sole responsibility.

You may wish to retain your own counsel, at your expense, to represent your interests in connection with the non-covered claims. Alternatively, you may choose to have such claims defended by the attorney designated by the Attorney General's Office and ORM to represent you in connection with covered claims. However, the Office of Risk Management will not be responsible for the payment of any judgment, or of any amount awarded to the plaintiff, which is based on non-tort claims.

Please be advised, however, that the State of Louisiana through ORM is defending this litigation with full reservation of all rights which are now, or which may become, available to it under applicable law, the insuring agreement, or otherwise, with regard to the payment of any sums, including settlement, in this matter. No action on the part of the state, or on the part of any of its engaged agents in investigating, inquiring into, corresponding about, or otherwise defending this claim should be construed as a waiver of those reserved rights. Again, ORM will not be responsible for any judgment, or other monetary award, which may be rendered on the basis of any non-insured claim; the funding of such a judgment or award would be solely your responsibility.

A copy of the suit is enclosed for your review.

Please advise if you have any questions or concerns.

Sincerely,

FORM B

*This form is to be used when the primary claims asserted in the petition/complaint **do not** sound in tort. This letter **does not** provide the option of the defendant allowing the AG/ORM appointed counsel to defend all claims asserted (in this instance, the tort allegations are incidental to the non-tort demands; for example ,as when the primary allegations sound in contract, etc..). **Here, the defendant must retain its own attorney to defend the non-tort allegations.***

Date:

(Agency/employee)

RE:

Dear _____ :

FARA Insurance Services is the third party administrator for the State of Louisiana, Office of Risk Management. We are in receipt of the above-referenced lawsuit, in which you are a named defendant. In review of same, please be advised that the Office of Risk Management provides a policy of liability coverage that was in force at the time of the alleged incident. While there are certain allegations contained in the petition/complaint that obligate ORM to defend and potentially indemnify you, other allegations contained in this pleading, and claims asserted therein, are not covered by any liability policy provided by ORM.

ORM provides coverage (defense and potential indemnification) for tort claims only. It does not provide coverage for claims of declaratory, injunctive or other equitable relief, claims for back pay, front pay, loss of overtime or employment benefits, punitive or exemplary damages, civil penalties, contractual or quasi-contractual claims and other matters. Any money judgment rendered against you on the basis of such claims would be your sole responsibility.

The Attorney General, with ORM's concurrence, will appoint legal counsel to defend the asserted tort claims.

With respect to claims in tort, ORM does not provide coverage for intentional acts, or for acts resulting in injury that is expected or intended from the standpoint of the insured. Additionally, coverage is not provided in the event any alleged tortious conduct is found to have been outside the course and scope of employment with the state. The Office of Risk Management will defend you with respect to such tort claims. However, in the event any alleged wrongful conduct is found to be intentional, or found to be outside the course and scope of employment with the state, you may receive no indemnification pursuant to the terms of the policy. Thus, any money judgment rendered against you under these circumstances would be your sole responsibility.

As the primary allegations of the petition/complaint do not sound in tort, it is your responsibility to retain your own legal counsel, at your expense, to defend your interests in connection with those non-covered claims. Legal counsel appointed by the Attorney General, and concurred upon by the Office of Risk Management, will only defend the claims asserted in tort, and will coordinate with the attorney you elect to retain. The Office of Risk Management will not be responsible for the payment of any judgment, or of any amount awarded to the plaintiff, which is based on non-tort claims.

Please be advised, however, that the State of Louisiana through ORM is defending this litigation with full reservation of all rights which are now, or which may become, available to it under applicable law, the insuring agreement, or otherwise, with regard to the payment of any sums, including settlement, in this matter. No action on the part of the state, or on the part of any of its engaged agents in investigating, inquiring into, corresponding about, or otherwise defending this claim should be construed as a waiver of those reserved rights. Again, ORM will not be responsible for any judgment, or other monetary award, which may

be rendered on the basis of any non-insured claim; the funding of such a judgment or award would be solely your responsibility.

A copy of the suit is enclosed for your review.

Please advise if you have any questions or concerns.

Sincerely,

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.

MEDICAID CLAIMS:

- The adjuster or defense counsel (if case is in litigation) must obtain information as to whether or not the claimant is a Medicaid recipient.
- Obtain the claimants date of birth and social security number.
- When DHH asserts a claim for reimbursement as the result of Medicaid payments, DHH will negotiate directly with ORM when seeking reimbursement.
- DHH will not negotiate with the plaintiff or plaintiff's counsel.
- ORM adjuster, Rita Major will handle the negotiations with DHH after the amount claimed has been determined. Rita's email address is: Rita.Major@La.Gov. Her direct telephone number is (225) 342-6059. Notify Rita Major of Medicaid payments as soon as possible to allow enough time for a thorough review of the pertinent records to identify related charges relative to the claim.
- Communicate Medicaid payment amounts to defense counsel and make certain it is included in the RSA. Medicaid lien amounts must be indicated on all FARA Settlement Evaluation Forms.
- ORM will negotiate the final amount of the Medicaid reimbursement claim and this amount will be included in settlement authority granted.

MEDICARE CLAIMS:

- Medicare's interests must be protected as they are considered a Secondary Payor.
- Medical bills paid by Medicare must be considered for reimbursement in any settlement.
- When the claim is first received the adjuster should request the claimant's date of birth and Social Security Number or HICN from the plaintiff attorney or pro se' plaintiff.
- If the needed information is not voluntarily provided, the information should be obtained by counsel through discovery.

FUTURE MEDICAL CARE FUND:

- Settlements and judgments on bodily injury claims may include an award for future medical care. R.S. 39:1533.2 authorizes that the funds be paid directly to the medical provider as the expenses are incurred pursuant to R.S. 13:5106(B) (3) (c). Specific language should be included in all settlements and judgments that reference amount allocated for future medicals.
- Once the agreement is reached or there is a final judgment, the FARA adjuster handling the claim will send a letter to the plaintiff attorney with instructions as to the handling of future medicals that are payable from the date of settlement forward.
- FARA has copies of the standard letter regarding payment from the Future Medical Care Fund.
- Sandy Pittman at FARA handles all future medical payments. A copy of the settlement/judgment and information regarding the injuries involved should be sent to her at Sandy.Pittman@Fara.Com telephone number is (225) 448-0367.

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 Tom Bluff for action. A copy of the request is to be sent to Farrel Hebert who will respond when Tom is unavailable. 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 10th 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.

CLAIM DENIALS:

When it is determined that the State has no liability, the FARA adjuster will draft a denial letter which must be approved by the FARA supervisor. The letter must then be submitted to Tom Bluff for review and approval.

HANDLING OF PETITIONS AND DEFENSE COUNSEL ASSIGNMENT:

- Lawsuits are usually sent to ORM by the State Agency, the AG’s office or by direct service upon ORM. Petitions received by FARA must be sent to ORM for processing.
- ORM will complete the required “Appointment and Contract Approval Form” (See Exhibit #11) and submit it along with a copy of the lawsuit 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.
- AG appointments to in-house Assistant Attorney General require no concurrence from ORM.
- AG appointments to contract counsel will require concurrence of the ORM Assistant Director for Litigation Management and the State Risk Director.
- Once ORM concurs with counsel appointment the “Appointment and Contract Approval Form” is returned to the AG for their records.
- A copy of the appointment will be provided to the FARA adjuster.

- 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.
- ORM Contracts Department will then issue a Professional Services contract to the appointed counsel. A copy will be provided to the FARA adjuster.

SUIT NOTIFICATIONS AND ATTENDANCE AT TRIALS AND MEDIATIONS:

FARA must maintain a calendar of all scheduled mediations and trials. Notification must be made to the ORM supervisor and to Jessica Brown Jessica.Brown@La.Gov on behalf of Joe Roussel, Assistant Director for Litigation Management, thirty (30) days prior to all trials.

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

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
- Trial RSA’s are due from assigned counsel 90 days prior to trial

LITIGATION MANAGEMENT:

Adjusters should be thoroughly engaged in the management of litigation and should work closely with defense counsel to bring about a prompt resolution of the claim.

- Adjusters should make certain that written discovery (interrogatories, requests for production of documents, and requests for admissions) are propounded (sent) to plaintiff counsel very early in the life of a case. They should monitor this aspect of the defense and communicate directly with counsel to make certain it is done.
- Discovery propounded by defense counsel is to be promptly answered. If plaintiff does not respond promptly, the adjuster should discuss the possibility of filing a motion to compel with defense counsel. Defense counsel is to provide a copy of the discovery responses to the adjuster.
- As a general rule, written discovery should be propounded and answered by the plaintiff prior to plaintiff being deposed. Receipt of this information beforehand will assist defense counsel in preparing for the deposition.
- The timing of a deposition is important. Plaintiff should not be deposed too early, because we want to obtain as much information as possible regarding

alleged injuries. It is often desirable for the injuries to mature to a degree (time for plaintiff to receive a diagnosis, treatment and, hopefully, a prognosis) before he is deposed. In most cases, a deposition should be taken from 8 to 12 months from filing suit, if not earlier (depending on how long after the incident suit is filed).

- Suggest discussing the need for, and the scheduling of, plaintiff's deposition with defense counsel. Confirm that written discovery has been sent to and answered by plaintiff. When appropriate, *ask (rather than direct or instruct)* defense counsel to take plaintiff's deposition. Document your requests. If there is disagreement or delay on the part of our defense counsel, please notify your FARA management team, as well as Tom Bluff, Farrel Hebert, Ann Wax and Joe Roussel. The matter will be addressed accordingly.
- It is FARA's responsibility to move and manage these cases. Confirm conversations through a follow up email.

STAFFINGS:

Requests for a staffing by the FARA adjuster are to be directed to Tom Bluff. 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.

RSA PROCESS:

Upon receipt of an RSA the FARA adjuster will closely review the RSA to ensure that all important elements of the claim and the defense are thoroughly covered, as well as to ensure that all sections of the RSA are properly completed. Please ensure that the current version of the RSA is being used by the defense attorney. Should the information in the RSA be incomplete, incorrect or lacking certain elements of defense preparation, the FARA adjuster will communicate directly with the assigned defense counsel to seek additional information. A copy of this query will be sent to LitigationRSA@Ag.State.La.Us and Tom Bluff. A completed Claims Council Review Form with recommendations and the RSA shall be submitted to Tom Bluff with a copy to Farrel Hebert within 10 calendar days of FARA's receipt of an RSA.

Should a critical date be looming soon after receipt of an RSA needing either correction or supplementation, the adjuster is to send the deficient RSA on to ORM with a label indicating that further information has been requested. This will allow ORM to commence its review in light of the critical date.

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. RSA should be reviewed and submitted to ORM within 10 calendar days of receipt. In the event of exigent circumstances, the RSA must be submitted to ORM in sufficient time for ORM to evaluate and take action on the request.

RSA's prepared by an AAG should include comments from the section chief 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 "FARA Claims Council Review Form" (Exhibit 12), then forward to the Tom Bluff for disposition. A copy of this correspondence is to be sent to Farrel Hebert also. 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 for the AG approval process. Upon approval by the AG, they will notify FARA and ORM as to the approved authority. Settlements \$500,000 and above are not final until approval has been granted by the Commissioner of Administration and 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.

RSA's prepared by contract counsel will be sent to the assigned FARA adjuster. The FARA adjuster will review the RSA; provide settlement evaluation forms that include their comments regarding the proposed settlement, then forward to Tom Bluff 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 for the AG approval process. Wanda Hebert will notify FARA and ORM as to the approved authority. Settlements \$500,000 and above are contingent upon the approval of the Commissioner of Administration and the Joint Legislative Committee on the Budget. Attendance by a FARA representative is mandatory. 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. Upon final approval by all required parties it will be FARA's responsibility to notify contract counsel of the approved action.

NEGOTIATION TRACKING:

SETTLEMENT AUTHORITY WITH MEDIATION

At mediation, the adjuster shall complete a copy of the "Mediation Summary" (Exhibit #13). Upon conclusion of mediation, the adjuster shall update the Litigation Offer Section in ICE to include all offers, counter-offers and settlements and attach the completed form in ICE.

SETTLEMENT AUTHORITY WITHOUT MEDIATION

When defense counsel is given monetary authority without mediation authority, the FARA adjuster shall inform defense counsel that authority has been granted using the following e-mail format.

Per the authority granted by ORM and concurred upon by the Attorney General's Office, you now have settlement authority in the amount of ... (describe monetary authority granted, as well as any non-monetary authority granted: this would include any

authority regarding individual plaintiff offers, Medicare and other liens, Medicaid reimbursement claims, future medical expenses payable through the Future Medical Care Fund, stipulations as to the existence of a duty and a breach thereof, waiver of a jury trial, participation in mediation, proceeding to trial, etc.....)

Unless particular circumstances or your granted authority dictate otherwise, please extend an offer in a timely manner. You must advise and update your adjuster re: any offers or counter-offers extended, counter-offers received or reasons for withholding any offers, as negotiations progress, but in any case no later than 30 days from receipt of this e-mail. It is vital that all offers, counter-offers and settlements are reported to the FARA adjuster as negotiations progress. This information is critical to the completion of ORM's bi-annual reports to the Legislature.

Your cooperation is appreciated.

The FARA shall create a 30-day diary to follow-up on the e-mail and add additional diaries to obtain the latest information on negotiations until the case is resolved or negotiations are discontinued.

The FARA adjuster shall enter all offers, counter-offers and settlements in the Litigation Offer section in ICE. This information is critical to the completion of ORM's bi-annual reports to the Legislature.

CLAIMS COUNCIL:

- A "Settlement Evaluation/Claims Council Review Form" is required on all cases presented to ORM Claims Council.
- Settlement requests over \$200,000 require the approval of Claims Council at ORM. The FARA adjuster may present the case in person, by telephone.
- The following items require Claim Counsel approval with participation by Joe Roussel and written concurrence of the DOJ Senior Counsel to the Attorney General:
 - Bifurcation of trial wherein liability and damages will be tried separately (RSA)
 - Requests for stipulation to liability (RSA)
 - Requests to waive a jury trial (RSA)
 - Authority to proceed to trial without any monetary authority
 - Request to forego an appeal/writ.
 - Response to plaintiff's Offer of Judgment (RSA)
- If the settlement amount requires approval from the Attorney General or other parties, ORM will coordinate that approval process and notify FARA of the final settlement authority.
- Although Claims Council is not required for bifurcation of damages, removal or remanding to State or Federal court, or extending an offer of judgment, written approval, either in the form of an RSA or an e-mail, is still required-see Case Handling Guidelines and Billing Procedures (eff. 07/01/13) for details.

PAYMENT REQUESTS OVER \$25,000:

- The claim should be documented with the amount of each check requested and the payee information.
- Documentation for the payment should be attached to each client authority request.
- Each client authority request shall be sent to Tom Bluff with a copy to Farrel Hebert.
- If the Client Authority Request is above his authority, Tom or Farrel will route it to the appropriate person within ORM for approval.

LITIGATED SETTLEMENTS AND JUDGMENTS:

- All litigated claims require the submission of an RSA and ORM approval FARA will be notified in writing of the decision on the requested authority.
- 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.

SUIT ABANDONMENT:

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**.

SUBROGATION:

- FARA must ensure that they protect the State's subrogation interest 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 subrogation matter will be submitted to ORM to the attention of Farrel Hebert 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.

For Transportation claims, authorization to waive less than 50% of our subrogation interest can be obtained from the designated Transportation staff member as noted in the above section titled ORM Internal Authority Designation. **Authorization to waive more than 50%** of our interests will require an RSA and submission to ORM claims council which shall be directed to Farrel Hebert at Farrel.Hebert@La.Gov. A request for the appointment of an attorney to pursue/protect our subrogation lien should be directed to Farrel Hebert at the email address noted previously.

CONTRACT AMENDMENTS:

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. Contract counsel should provide an email or letter stating reasons that the amendment is required.

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.

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: FARA Adjuster

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:

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

Joseph M. Roussel Date
Assistant Director for Litigation Management

Ann D. Wax Date
State Risk Administrator - Claims

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 Tom Bluff for review. If in order, he will obtain the required signatory approvals and route to the ORM Contract's Unit for processing.

APPROVAL LEVELS FOR CONTRACTS:

<u>Amount of Contract</u>	<u>Approval Required</u>
\$ 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 RENEWALS:

The FARA adjuster will complete the Contract Performance Evaluation Form and obtain a current case assessment/Status Update Form (no older than 90 days) on all contract attorney renewals.

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 (See exhibit 14) completed (signed by the adjuster, FARA supervisor and defense counsel) and returned to the ORM Contract Reviewer, Deborah Grand at 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.

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.

EXPERT CONTRACT PAYMENT REQUESTS:

The adjuster will verify all necessary information and contract balances prior to submitting an invoice to ORM for payment.

1. List vendor/defense attorney name
2. List contract number, balance on contract prior to payment of invoice and contract dates
3. Invoice number, dates of service range and approved amount of invoice
4. If any invoice amount is reduced include an explanation of why it was reduced.

Example:

“Please place the attached invoice in line for payment. I have reviewed and audited the invoice and the charges are in line for payment as follows”.

CONTRACT PERFORMANCE EVALUATION FORM:

Contract Performance Evaluations (CPE’s) 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. CPE forms have been revised. There is one form specific to Legal (Contract Performance Evaluation – Legal) and one form specific to Expert (Contract Performance Evaluation – Expert) services. Completion of the appropriate 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 where an expert was obtained under contract. CPE’s must be signed by the handling adjuster and their supervisor. When outside defense counsel has been assigned, Acuity will send the assigned adjuster a notice of contract expiration 90/60/30 days prior to the expiration date of the contract. Use the Contract Performance Evaluation – Legal form to request contract renewals before the expiration of the 3 year attorney contract and to close a contract upon the conclusion of the case. Also, this form must be completed on cases handled by AAG staff attorneys upon the conclusion of the case.

OCR Number: information will be input by ORM Contracts Unit

CFMS Number: Contract number

Actual Amount Paid: the total amount paid under this contract number

Contract Amount: current amount of contract

Hourly Rate of Pay: dollar (\$) amount per contract as some counsel receive regular hourly rates and some receive increased hourly 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

Remaining questions on form are self-explanatory and must be completed.

CPE’s completed on cases handled by contract defense counsel should be emailed to Lucille Gautreaux at lucille.gautreaux@la.gov with a copy to Ann Wax at ann.wax@la.gov. CPE’s completed on cases handled by AAG staff attorneys, should be emailed to Ann Wax at ann.wax@la.gov. CPE’s must be signed by the handling adjuster and supervisor.

When a renewal is needed on a case being defended by contract counsel, the FARA adjuster will complete the CPE checking off the “Case Ongoing - Renewal Needed” box and attach a copy of the most recent case assessment or status update form (must not be more than six months old) and submit them to Lucille Gautreaux. If the last case assessment/status update report is more than six months old, then it will be the responsibility of the FARA adjuster to obtain a current status update to submit along with the CPE to Lucille Gautreaux (lucille.gautreaux@la.gov) to begin the renewal process along with a copy to Ann Wax at ann.wax@la.gov. Lucille will not be able to process the renewal request unless she has received both documents.

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:

OCR Number
CFMS Number
Contract Amount
Hourly Rate of Pay
Contract Begin and End Dates
Actual Begin and End Dates
Number of Amendments

Contractor Name will be the name of the AG attorney – DOJ/AG – Litigation Program. All other questions asked should be self-explanatory and must be completed. CPE’s completed on cases handled by AAG staff attorneys, should be emailed to Ann Wax at ann.wax@la.gov. CPE’s must be signed by the handling adjuster and supervisor.

On expert contracts, Deborah Grand will notify the FARA adjusters quarterly of upcoming expiring contracts. Deborah will actually provide the adjuster with a CPE that will have the contract information completed and request that they complete the form requesting a renewal and email it to her at deborah.grand@la.gov. Once the services of an expert are no longer required and their final invoice has been paid, the FARA adjuster should complete a CPE-Expert form and email it to Deborah at the email address stated above. Do not send a copy of the Contract Performance Evaluation – Expert form to Ann Wax.

DEFENSE COUNSEL BILLING:

Most defense attorneys will submit their invoices through Acuity. An exception may be made when defense counsel is out of state. Tom Bluff must approve all invoices not presented through Acuity. The adjuster will provide the following required information when requesting contract attorney bill payments:

1. Defense attorney name
2. Contract number and remaining balance.

3. Outstanding, approved invoices with dates of service.
4. An explanation for any reduction in the invoice amount.

Example:

“Please place the attached invoice in line for payment. I have reviewed and audited the invoice and the charges are in line for payment as follows”.

Acuity contact person is Lucille Gautreaux at Lucille.Gautreaux@La.Gov>
(225) 342-1517.