

(Revised –10/27/2014)

Client Instructions – Road Hazards

ORM INTERNAL AUTHORITY DESIGNATIONS:

Rick LeJeune will be the primary contact person on all Road Hazard claims. He will be responsible for handling the RSA process, 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 his authority level, he will route it to the appropriate person within ORM. Please copy Farrel Hebert on all emails to Rick LeJeune. If Rick is out of the office, Farrel will handle your requests. Contact information is as follows:

Rick LeJeune – (225) 342-5441 – rick.lejeune@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”.

STATUTES AFFECTING ROAD HAZARD CLAIMS:

Louisiana Revised Statute 9:2800 - The state must have actual or constructive notice of a defect and fail to remedy the defect in a reasonable time before the state can be held liable.

Louisiana Revised Statute 9:2798.4 - The state is granted immunity from liability for injuries sustained by persons operating a vehicle under the influence of alcohol or drugs provided that the operator is found to be in excess of 25% negligent and that this negligence was a contributing factor causing the damage.

HANDLING OF NON-LITIGATED CLAIMS:

- Notice is the claim is made by the claimant directly to the appropriate DOTD district office where the incident occurred.
- Upon receiving notice of a claim DOTD will prepare either a “DOTD/ORM Report of Road Hazard Incident” (See Exhibit #1) for general road hazard claims or a Form “DA2073”(See Exhibit #2) for glass breakage claims caused by mowers or tractors. Both will be sent to FARA.

- Location code should be the four numbers at the lowest level of the facility named in the petition. Road Hazard claims are coded to the DOTD district in which they occur. See Map of Districts attached. (See Exhibit #3).
- Upon receipt of a report form, FARA will create a “Reporting Purposes Only” claim.
- If a claim is reported on the “DOTD/ORM Report of Road Hazard Incident” form, FARA will then send a “Road Hazard Claim Form”(See Exhibit #4) to the claimant. No claim form is necessary on claims reported on a “DA2073” (Glass Breakage).
- If a completed “Road Hazard Claim Form” is not returned, no claim will be created and no further action is required.
- If the “Road Hazard Claim Form” is returned, a claim is created and an acknowledgement letter containing the claim number, adjuster ID, etc. is sent to the claimant.
- Once a claim is created an appropriate form is sent to DOTD to obtain their records for the area where incident occurred. These include maintenance, complaint and inspection records.
- There are two types of forms used to obtain information from DOTD. A “General Questionnaire” (See Exhibit #5) which addresses potholes or debris in the road and a “Paint Checklist” (See Exhibit #6) which is used for overspray or wet paint claims. No questionnaire is required on glass breakage claims as this is covered by the “DA2073”.
- Liability is determined based on a review of information provided by DOTD.
- Non-litigated Road Hazard claims are funded and paid within a certain limited budget per fiscal year.
- FARA must maintain a record of cumulative amounts paid on small Road Hazard claims within each fiscal year.
- A monthly report will be provided by the 5th of each month which identifies the amount paid per fiscal year to date.
- A signed “Agreement to Settle” (See Exhibit #7) will be obtained from the claimant prior to issuance of the settlement check.
- A minimum of two estimates must be obtained from the claimant to establish the cost of repair.
- If repairs have been made, paid receipts may be considered if they appear to be reasonable.
- If the damages are greater than \$2,500 or if the vehicle is not drivable, an independent appraiser will be assigned to assess the damage.
- A copy of the claimant vehicle registration and proof of insurance will be required.
- An injured guest passenger will not be prohibited from making a bodily injury claim even if the driver/owner is uninsured.
- The uninsured driver/owner of an auto will be prohibited from recovering the first \$15,000 of bodily injury and the first \$25,000 of property damage. See R.S. 32:866. Also review R.S. 9:2798.4 which prohibits recovery when certain levels of alcohol are consumed and other statutes as appropriate.
- Third party vehicle damage claims for “glass only”, where liability is clear, such as debris thrown by a DOTD mower or tractor or reported on “DA2073” (Vehicle

Glass Repair/Replacement Loss Notice) directly to FARA at claimopening@fara.com.

- FARA has authority to settle non-litigated claims up to and including twenty-five thousand (\$25,000) per claimant without State approval (ORM or DOJ).
- For settlements over twenty-five thousand (\$25,000) per claimant, FARA must submit a “Settlement Evaluation/Claims Council Review Form” (See exhibit #8) to ORM to obtain settlement authority.
- 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.
- Non-litigated claims that are valued in excess of \$20,000 should be treated as large losses.

RECOMMENDED ROAD HAZARD INVESTIGATION FOR LARGE LOSSES:

Road Hazard claims investigation should contain:

1. Scene photos
2. Diagram and measurements of the accident scene
3. Recorded statements or depositions of the claimant and all witnesses where there is injury or where liability is questionable. Failure to obtain a recorded statement must be explained in the claim file notes.
4. Accident Report
5. Weather data
6. Data on previous claims at accident site
7. Claimant BI indexing
8. Proof of claimant liability insurance
9. All investigation requested by ORM or the assigned defense counsel
10. The bulk of the investigation should be completed within 60 days of receipt of the claim.
11. Medical releases and copies of all pertinent medical records should be requested and evaluated by FARA.
12. FARA will utilize the services of an economist expert to evaluate the claims for future wage loss. The State will contract with the expert identified by FARA and/or the assigned defense counsel.
13. Rick LeJeune will notify the FARA adjuster if an LSP Accident Reconstruction Report has been prepared.
14. Should an Accident Reconstruction Report be available, a copy will be provided to the FARA adjuster who will provide this and other available investigation to the assigned defense counsel.
15. Expert witnesses are frequently needed to establish technical information, such as, road conditions, design and construction, as well as blood alcohol levels and toxicology findings.
16. The FARA adjuster should consider the potential value of an expert’s testimony at trial when establishing a plan of action. See

section, “Contracts for Experts” for instructions on retaining an expert.

CATASTROPHIC CLAIMS:

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

RESERVATION 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.
- ORM may delegate the negotiation of Medicaid reimbursement claims to defense attorney.
- 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 t Evaluation/Claims Council Review Form" 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 Payer.
- Medical bills paid by Medicare must be considered for reimbursement in any settlement/judgment.
- 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 for bodily injury 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 include 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 CATASTROPHIC CLAIMS:

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

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 **(name of ORM Supervisor)** 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 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

SMALL CLAIM DENIALS:

- When it is determined that the State has no liability, the FARA adjuster will issue a denial letter.
- An appeal made for reconsideration of a denied claim will be reviewed by Frank Majorie who, after his review, will either restate the denial or resubmit the issue to

Rick LeJeune should new information be brought out that could change the decision to deny the claim.

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 so that proper recording of the petition may be done.
- ORM will complete the required "Appointment and Contract Approval Form" (See Exhibit #9) 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 an 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
- Ninety Days Prior to Trial – RSA due from assigned counsel

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 Rick LeJeune, 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 Rick LeJeune. 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 Rick LeJeune. 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", then forward to the Rick LeJeune 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. 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/Claims Council Review Form" that includes their comments regarding the proposed settlement, then forward to Rick LeJeune 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. 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 #10). 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” will be provided on all claims submitted for Claims Council review.
- Settlement requests over \$200,000.00 require the approval of Claims Council at ORM. The FARA adjuster may present the case in person, by telephone, or submit the request electronically and waive participation.
- The following items require Claim Counsel approval with participation by Joe Roussel and written concurrence of the DOJ Senior Counsel to the Attorney General:
 - Requests for stipulation to liability
 - Requests to waive a jury trial
 - Authority to proceed to trial without any monetary authority
 - Request to forego an appeal/writ.
- 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 Rick LeJeune with a copy to Farrel Hebert.
- If the Client Authority Request is above his authority, Rick 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.
- Settlements and judgments on litigated Road Hazards claims are paid via legislative appropriation.

- All settlements must be reduced to consent judgments. These Consent Judgments and court judgments are submitted to the legislature for appropriation on an individual basis.
- Plaintiffs are responsible for obtaining legislative sponsorship for the introduction of an appropriation bill to fund payment of the claim (Settlement/Judgment). Rita Major will track and coordinate the payment of the appropriations.
- FARA adjusters must promptly notify Rita Major of all finalized settlements or judgments.
- In the case of settlements that require reduction to Consent Judgments, the FARA adjuster should instruct our defense counsel to prepare a draft Consent Judgment. This draft should be forwarded to Rita Major for her review and approval. An additional copy should be sent to Rick LeJeune.
- Rita Major will provide FARA with a list of Road Hazards judgments appropriated in the regular legislative session by July 15th each year.
- FARA will enter into iCE a “Legislative Appropriation Date” on each appropriated claim. This date will be June 30th of the year in which the appropriation is made.

In order to facilitate the payment process, the FARA adjuster shall provide a packet containing the following documentation to Rita Major once a judgment or settlement is final:

1. A copy of the petition and any amending petitions
2. Copies of court judgments at every level or documentation explaining why the matter was not pursued past the trial or appeal court level
3. Any orders setting court costs, expert fees, etc.
4. Supporting documentation for settlement authority, such as Claims Council decision forms, RSAs, DOA and Legislative Subcommittee approvals and e-mails confirming settlement authority.
5. Copies of succession documents
6. Any documentation regarding authority to settle on behalf of minors including copies of court approved minor settlements
7. Information on all plaintiff attorneys who may have a financial interest in the settlement or judgment
8. Documentation regarding any liens
9. Affidavit of Finality

Rita Major will submit a payment request packet to ORM Accounting. If all documentation is in order, a manual warrant will be sent to the Treasurer’s Office requesting checks be issued to pay the individual judgments.

Payment will be made by check from the Treasury. Though one check may be issued, it will be necessary to break out the payment record by pay type. Payment information must be entered into the claims management system (iCE).

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 Road Hazard claims, authorization to waive less than 50% of our subrogation interest can be obtained from the designated Road Hazard 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.

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

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:

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.
State Risk Director

Date

Joseph M. Roussel
Assistant Director for Litigation Management

Date

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 Rick LeJeune 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

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 #11) 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. Rick LeJeune 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.