



UNIVERSAL  
UNDERWRITERS  
GROUP

**LITIGATION  
BEST PRACTICES  
FOR OUR DEFENSE  
COUNSEL**

**Universal Underwriters  
Insurance Company**

**TABLE OF CONTENTS**

**I. PREAMBLE.....1**

**II. ASSIGNMENT .....1**

**III. INITIAL REPORT.....1**

**IV. CASE DEVELOPMENT .....2**

    A. RESPONSIVE PLEADINGS .....2

    B. DISCOVERY .....3

    C. EVALUATION AND REPORTING .....4

    D. SETTLEMENT EFFORTS .....5

**V. COURT REPORTERS AND OTHER ANCILLARY COSTS .....5**

**VI. BILLING FREQUENCY.....6**

**VII. COMPLIANCE WITH BILLING GUIDELINES .....6**

    A. Importance.....6

    B. Significant Instances of Non-Compliance .....7

        1. Incorrect Hourly Rates, Overlapping Service Dates, and Timekeeper Names and Levels.....7

        2. Insufficient Descriptions of Fee Activities or Expenses.....8

        3. Non-billable Clerical/Secretarial Activities .....11

        4. Ordering Medical, Employment, and Other Records .....12

        5. Preparation of Standard Form Notices, Pleadings and Discovery Requests.....13

        6. In-Firm Conferencing .....14

        7. Improper and Multiple Staffing.....14

        8. Block Billing.....15

        9. Miscellaneous Non-Billable Activities .....15

        10. Billing Appeals – Time Limitation .....16

**VIII. HOW YOUR PERFORMANCE IS MEASURED .....16**

## **I. PREAMBLE**

This document is denominated, "Litigation Best Practices for Our Defense Counsel" for the Universal Underwriters Insurance Company (UUIIC).

Previously, UUIIC and its sister and parent companies jointly distributed Defense Research Institute approved guidelines for defense counsel (also posted on the UUIIC Web site or available by e-mail from UUIIC).

These "Best Practices" are designed to further illuminate and complement the guidelines. Best Practices are definitely not intended to be read or interpreted in any way that would interfere with the independent professional judgment of our panel and staff attorneys. This document is intended to parallel the guidelines, but provide more details and instructions than the more general statements issued in the guidelines.

If a defense counsel ever believes that his or her representation of the insured will be materially impaired or limited by compliance with the guidelines, or these Best Practices, the counsel should consult with the insurer to discuss modification or waiver of the guideline or practice. If any such perceived impairment or limitation cannot be satisfactorily resolved, defense counsel are advised to always follow sworn ethical obligations including, but not limited to, withdrawal and/or substitution.

## **II. ASSIGNMENT**

Each UUIIC case assignment is personal to the assigned attorney. Universal's philosophy is that its case assignments are specific to attorneys and not firms. Reassignments within the firm are not allowed without advance written approval of the Universal Underwriters' claims professional(s). If firm turnover or attrition requires a new attorney, UUIIC will have to be consulted as to whether any reassignment goes to another member of the firm or a different firm. If a file is moved within the firm or another attorney is assigned to do a specific task or project on the file, any cost associated with the new attorney getting up to speed in review of the file will be borne by the firm. See also, Section VII.B.7. concerning improper and multiple staffing.

At assignment, Defense counsel should be given a statement of the coverage limits and policy period and will be advised as to whether or not there is a reservation of rights as soon as that decision is made. Defense counsel will not comment on or advocate for or against any coverage position, unless ethically required to do so.

The insured should be contacted within 3 days by letter, e-mail or phone for introduction and acknowledgment of defense obligations.

## **III. INITIAL REPORT**

As stated in the guidelines (at Section IV), no later than 45 days after assignment, the initial report is due. That should be calendared at case inception.

The information acquired by that time should be assimilated and delivered to both the insured and Universal's designated claims handler(s). An estimate of the full value of the damages case should be given, as well as any estimated discount off of full value, based on what is currently known about unilaterally developed or other discovered facts and evidence.

This report should also comment on the following: venue considerations; defenses that exist or are potentially capable of development, including technical defenses; comparative fault; mitigating or aggravating factors; the viability of any claims for punitive or exemplary damages; credibility and availability of witnesses; motion practice; and, the cost of proceeding with discovery. In addition, the following factors should be discussed or earmarked for factual development: personnel changes (known or anticipated) of the insured or other parties; potential implied or express contractual indemnity; known criminal activity, alcohol or drug involvement; fast-track or procedural pressures or considerations; settlement strategy; the potential for and effect of piecemeal settlement by other defendants; other joint and several liability issues as they might impact settlement or verdict value; and, insurance limits of the respective parties and known coverage issues.

*Significant development reports should be promptly given to Universal's claims handler any time information is obtained through discovery or otherwise that significantly affects the damage or liability aspects of a case in a positive or negative way. Defense counsel is encouraged to consult with and advise the insured, in writing, when any such value change occurs.*

#### **IV. CASE DEVELOPMENT**

##### **A. Responsive Pleadings**

If an answer to the pleading is appropriate, it should be made immediately or as soon as practicable, with due consideration to strategic initiatives.

An extension to plead is encouraged whenever the extension is based on a perceived ability to achieve resolution at an early stage.

If the initial response to a suit contemplates a challenge to the pleadings or other dispositive motion, the claims handler should be consulted. Due regard should be given to the time, expense and delay of such challenge, the likelihood that such law and motion might educate the opponent without eliminating the challenged claims as a matter of law, the extent to which such success might limit the scope of discovery on remaining claims and the ability to pursue defenses to such claims, as well as the effort and expense saved by reducing or eliminating claims at the pleading stage.

## **B. Discovery**

### **1. Interrogatories and Document Requests**

With the answer or as soon as local civil procedure otherwise allows, standard form interrogatories and document requests should be served on opposing parties. If in a particular circumstance defense counsel feels such discovery is not needed based on the type or size of the case and that resolution is possible on the defense terms without it, that course of action should be discussed with the claims handler. Such resolution is encouraged.

If defense counsel believes that standard form interrogatories and document requests are not sufficient or appropriate for a particular case and, accordingly, that it is necessary to prepare non-standard/customized interrogatories or document requests, the claims handler should be consulted and the necessity for preparing same should be discussed as well as the amount of time defense counsel anticipates will be required to prepare same. *Unless the fact that such consultation has occurred is noted in the description for the invoice time entry for preparation of such non-standard/customized discovery, the time will be disallowed.*

### **2. Locating Missing Persons and Investigators**

As concerns the finding of missing persons, parties or witnesses, more expensive efforts should be deferred, initially, in favor of internet or database investigation which can be done with Universal's home office or zone resources for a relatively small sum. Defense firms *should not* engage in such efforts on their own unless Universal's claims handler has been consulted and has advised that Universal will not conduct such investigation itself. An investigator should not be obtained until the claims handler is consulted and the need for and scope of such further and more detailed investigation is determined, after less intrusive and expensive methods have been tried, time permitting.

### **3. Obtaining Medical Records**

Please refer to the comments set forth in part VII, section B.4., *infra*.

### **4. Review/Summary/Analysis of Medical and Technical Documents**

If it is likely that a summary, review or analysis of medical records would require in excess of three (3) hours, then such records will be sent to an independent medical review service designated by Universal. Engineering, accounting, financial and other technical documents should also be sent to similar such specialized reviewers if it is likely that such documents will require more than three (3) hours to review and analyze or summarize and after consultation between defense counsel and the claims handler, it is determined that an independent review service could perform such review/analysis more efficiently and at less expense.

Every effort should be made to submit all potentially relevant medical records or other technical documents to the review service at one time, and as early as possible.

After reviewing the report of any such independent review service, defense counsel and the claims handler should consult and determine if any further or more intensive medical review is necessary or prudent. *Further or more intensive medical review will be conducted only if that determination is made after such consultation. The fact that such consultation has occurred should appear prominently in the billing description for such review. Defense counsel should consider whether further review can be more efficiently staged, but if further review is needed to prepare for deposition, to prepare exhibits for deposition or trial or for motion support, or any other strategic reason, then consultation is appropriate.*

#### **5. Extensions of Time and Delays in Pleading or Scheduling Depositions or Inspections**

Defense counsel are impliedly authorized to extend professional courtesies to opposing counsel regarding extensions of time for responses to discovery and pleadings and scheduling of depositions and inspections. However, defense counsel should always balance the attendant delay against the potential detriment to the defense and the insured's and the insurer's interests in the efficient and prompt resolution of litigated claims. Personal scheduling convenience is not a good reason to delay the resolution of the insured's case.

#### **C. Evaluation and Reporting**

Defense counsel should, whenever possible, meet personally with the insured and known, available and relevant witnesses within the first 30 days after receiving the assignment of a case.

At the end of that period, defense counsel should know, as best one can from a unilateral review, the credibility and appearance of witnesses and most of the substantive operative facts from the defense side of the case. By then, counsel should also know what he or she does not yet know and be able to determine what additional investigation or discovery needs to be accomplished and provide a timetable and plan to accomplish it in order to provide the insurer and the insured with an illuminated, informed and accurate evaluation.

When defense counsel is assigned a claim the full value of which exceeds \$250,000 or is assigned a claim for closed-head injury, severe burns, multiple fractures, amputations, fatality, permanent disability, or sexual abuse, molestation or discrimination, both the attorney and the local claims handler have the joint responsibility to report to the home office claims department as well as the appropriate zone handler dedicated to such severe injury claims. Thereafter, all reports will go simultaneously to the home office professional

and zone adjuster, captioned on every report generated, as well as to the insured.

These two claims professionals should be captioned on all substantive reports, along with the insured, and any other insurer personnel whom the file handlers may from time to time designate. In some cases, the home office claims person may defer joint handling in cases of discrimination or financial severity only. All other claims described above must have this dual oversight of zone and home office personnel. Any other deferment of such cases will require the approval of the Assistant Vice President of Claims or higher authority.

If it is felt that a *jury verdict search* would assist defense counsel in the evaluation of a case, counsel shall contact Universal's claims handler to have the search performed by claims counsel at UUIC's home office rather than performing the search in-firm or outsourcing it to a vendor. If a particular venue or jurisdiction is not available through UUIC's resources but is available through some other resource, the expense and necessity of performing the jury verdict search should be discussed with UUIC's claims handler before a determination is made as to whether or not to have it performed.

#### **D. Settlement Efforts**

With the delivery of the answer, defense counsel should invite a settlement demand or proposal, and the basis and justification for it, soliciting plaintiff's views early and often, both formally and informally.

Efforts to set up a negotiated resolution should occur frequently. Tools such as cybersettle, structured settlements, high-low agreements, mini-trials, are some of, but not an exhaustive list of, the creative strategies designed to promote closure. Universal places a premium on creative resolutions and creative thought.

Defense counsel and the claims handler should coordinate settlement strategy. Defense counsel should encourage the claims handler to enter into settlement negotiations at any time liability and damages can be rationally evaluated, always with due regard to defense counsel's professional judgment and consistent with the size, legal complexity, and sensitivity of the negotiations, settlement terms, and agreed resolution strategy.

#### **V. COURT REPORTERS AND OTHER ANCILLARY COSTS**

When UUIC defense counsel schedule depositions, counsel should use the court reporting service designated by UUIC, and if none, should use personal best efforts to secure a competent certified court reporter at the most competitive market rate practicable in the jurisdiction in question.

With respect to any other ancillary legal support services, such as subpoena services or video conferencing, defense counsel should use those services directed by UUIC. If none, counsel should use best efforts to secure the most competent cost-effective services. The extra expense of videotaping a

deposition should not be incurred without consultation of the claims handler. Expedited transcripts should be avoided whenever possible. Billing entries for expedited, extraordinary or ancillary legal services should be described in the billing invoice with sufficient particularity such that justification for the added expense is self-evident and the fact that same was incurred after consultation with and approval of the claims handler must be noted in the description or the expense will be disallowed.

When traveling on business at UUIC's expense, defense counsel are strongly encouraged to spend money as if it were their own. Hotels should not be extravagant. Car rental and travel services can often be economically obtained or found on the internet. Such comparison shopping is strongly encouraged.

## **VI. BILLING FREQUENCY**

Pressure to obtain and retain competitive market share, but not under-price insurance products to the point of loss, is intense. Setting the price of insurance products is complex and often uncertain. Defense counsel should understand that if renewals are processed without knowledge of large unpaid legal fees or without a healthy respect for the importance of accurate reserving philosophy, the insurance product may be under-priced and our financial performance undermined.

Therefore, bills must be submitted quarterly or when a threshold of \$5,000 in outstanding bills is reached, whichever occurs first. "Quarterly" for these purposes means *every three months after file assignment*. Bills do not have to be submitted on the calendar quarter and, in fact, bill jams will be avoided by compliance with this definition of "quarterly." Bills submitted outside the time limits are not within the guidelines and may be rejected and not paid.

## **VII. COMPLIANCE WITH BILLING GUIDELINES**

### **A. Importance**

A firm's working knowledge of and compliance with UUIC's billing guidelines significantly reduces the amount of time and effort required by UUIC's attorney staff to audit its invoices. It also substantially reduces the expenditure of time by the firm's personnel in submitting appeals and the valuable time of our auditing professionals in resolving those appeals. Thus, a firm's compliance with the billing guidelines is a primary factor considered by UUIC in determining whether to continue to assign work to a firm and whether to grant increases in hourly rates. There will be times that the firm and the audit review will leave us at odds and/or in plain disagreement. UUIC will insist on professionalism and courtesy from its staff in this process and will request that the firms and their billing staff comport with the level of mutual respect and professionalism we have come to enjoy with our lawyers. Non-compliant firms take a largely disproportionate amount of expensive professional internal resources in primary auditing as well as resolving appeals. We know our firms are cognizant of the lost value of professional time and expect that respect to be mutual.

## **B. Significant Instances of Non-Compliance**

There are a number of areas of non-compliance that cause needless adjustments and/or appeals for a significant number of firms and/or on a repeated basis that merit discussion. The following problem areas account for a significant majority of the repetitive non-compliance issues:

### **1. Incorrect Hourly Rates, Overlapping Service Dates, and Timekeeper Names and Levels**

A firm is not permitted to submit its bills electronically unless hourly rates for its members and/or staff who are assigned to work on UUIC's matters have been agreed to and approved by UUIC. *Firms are not permitted to unilaterally increase those rates without approval by our Home Office. The field has no authority to grant raises.* Generally, rates are approved for categories of timekeepers, such as partners, associates, paralegals and law clerks.

Unless a timekeeper is correctly identified by name and level (i.e., partner, associate, etc.), it is impossible for UUIC's auditors to determine whether the hourly rate billed for that timekeeper is correct. If the correct hourly rate for a timekeeper cannot be determined from the invoice or the hourly rate billed for a timekeeper has not been approved by UUIC, the auditor is left with few options. The auditor can attempt to determine that rate from another source (e.g., calling someone at the firm) and/or to adjust each entry for that timekeeper to the approved hourly rate or to reject the time entries billed by that timekeeper or reject the entire invoice. All of these options waste both the firm's and UUIC's valuable professional human resources. Because the former options take an inordinate and unwarranted amount of time, the latter options are the ones usually exercised. Any adjuster can access the attorney database and confirm your approved rates for you. Don't send bills that do not conform. Non-conforming bills are subject to rejection, slow down our processing and the payment not only of your firm's invoices but those of other firms as well.

Overlapping service dates are a *major problem* for both of us. There is no other single issue that will slow down our ability to promptly process your bills. Overlapping service dates trigger an expensive and time intensive and delaying research effort to retrieve old work and old files to verify that the overlapping dates are not describing an item that was already paid in another invoice. Overlapping service dates issues might also be resolved by disallowance of all charges in the overlapping period. Delay in payment and ineffectual use of both of our professional staffs is the result.

## 2. Insufficient Descriptions of Fee Activities or Expenses

### a) Adequate Description of Fee Activities

UUIC's billing guidelines require that firms provide sufficiently adequate descriptions of services performed to "inform of the nature, purpose or subject of the work performed and the specific activity or project to which it relates." Defense counsel's bills should be sufficiently clear that a lawyer not familiar with the file can meaningfully audit the bill and determine what was done and how such activity reasonably and efficiently moved the file toward a negotiated or litigated closure and whether the time billed for an activity appears to be reasonable.

- UTBMS codes are required, and should be used as accurately as possible. However, they are not a substitute for a "stand alone" adequate description, without reference to the code. For example A107 is for the task "communicate (other outside counsel)." Unless a firm's billing software automatically incorporates Code wording into the invoice description and cannot be programmed to eliminate that feature, such wording should not be included as part of the invoice description of the activity. Although the Code is important to UUIC for strategic and aggregate information and litigation planning, it is distracting and not helpful to auditors when reviewing invoice descriptions.

### i) Telephone Calls and Letters

It is not acceptable billing practice to bill for telephone calls or letters to someone (even UUIC's claims handler on the matter) without providing sufficient detail of the identity (name and position) of the other party or parties and the purpose and subject of the communication to allow UUIC's auditors to determine if the amount of time billed for the call or letter appears to be justified. A plainly inadequate initial description made proper on appeal *is not a basis for reinstatement*.

### ii) Review of Documents

The same is true for time billed to the review of documents. It is impossible for UUIC's auditors to determine if the amount of time billed for the review of certain documents appears to be reasonable unless some detail has been provided concerning the type and complexity of the subject matter and/or the volume of the material reviewed (e.g., number of pages, number of boxes, number of inches thick, etc.). For example, "Review plaintiff's response to request for production of documents, consisting of 200 pages of medical records and a 50 page handwritten daily

diary.” In addition, the description should state the specific purpose for the review. A plainly inadequate initial description made proper on appeal *is not a basis for reinstatement*.

### **iii) Research and Motions**

*The firm must affirmatively state in its description of time billed for research that it previously consulted with an identified UUIC representative for all time billed in excess of three (3) hours or all such time will be disallowed by UUIC’s audit staff.* If time is billed to the same research project on more than one invoice, the time billed in excess of three (3) hours on each invoice will be disallowed unless such a statement is included in the description for that research in each invoice. The description must state with particularity the nature of the issue being researched and demonstrate how it relates to the motion.

No motion practice should be undertaken without consultation with the UUIC adjuster and the billing description for time spent in preparation for any motion should recite that such consultation has occurred.

### **iv) Travel Time**

Just as block billing is inappropriate in description of fee expenses (see B.8., *infra.*), travel time should also be the subject of a separate billing entry for each trip and the description should make clear the origin, distance and destination of each trip and the amount of time it took to travel to and from those locations. Travel time should not be included in an entry with time billed for the activity that was the purpose of the trip. Block billing of this nature is disallowed. A plainly inadequate description made proper on appeal *is not a basis for reinstatement*.

## **b) Adequate Description of Expenses**

### **i) Mileage and Travel Expenses**

Block billing of travel expenses is not acceptable. Each component of the expenses incurred in traveling must be the subject of a separate line item billing entry. Mileage, airfare, rental car, hotel and meals must be entered as separate line items.

Mileage is not *billable unless the round trip mileage is greater than 50 miles and only the mileage in excess of 50 miles is billable*. The description for reimbursement of mileage expense must state the origin, destination and purpose of the trip and the total number of miles traveled in the round trip and the billed rate per mile. A plainly inadequate description made proper on appeal *is not a basis for reinstatement*.

## **ii) Photocopies**

Regardless of whether photocopies are made in-house or out-sourced, the number of photocopies and rate per copy must be stated. A plainly inadequate description of these requirements made proper on appeal *is not a basis for reinstatement*.

The reimbursement of photocopying expense is limited to the rate of \$0.10 per copy unless the firm had no control over the cost of photocopying the documents in question. The primary examples of this exception are the costs charged for obtaining copies of medical records or copies of records from some governmental entity, such as tax returns or driver's license records. The exception would also apply in the event the firm does not have the equipment to make acceptable copies in-house, such as color copies of photographs, copies of x-rays, copies of blueprints, etc. Unless evident that the firm had no control over the cost of making photocopies, the description must state why that was the case or any rate in excess of \$0.10 per copy will be disallowed.

If a firm chooses to have copies made by an outside vendor that it could have made in-house, the cost of copying will be deemed to be within its control and subject to the maximum reimbursable rate regardless of the rate charged by the vendor (including tax).

## **iii) Routine Postage and Expedited Delivery Costs**

Routine postage is not billable, should not be billed, and will not be paid.

The cost of expedited or special methods of delivery, which includes services such as express/overnight mail, Federal Express, UPS, fax filing, etc., is not billable and should not be billed and will not be paid unless the description in the invoice contains a factual statement demonstrating that the use of such other method of delivery was necessitated by circumstances beyond the firm's control. The mere fact that an expedited method of delivery had to be used because of filing deadlines or other time restrictions does not demonstrate that the circumstances were beyond the firm's control. A plainly inadequate description made proper on appeal *is not a basis for reinstatement*.

## **iv) Faxes**

Faxes are not billable on a per page basis. Only the long distance charge incurred for sending an out-going fax is billable and only then if adequately described. The long distance charge for an outgoing fax should be described in the same manner as other long distance charges but with the additional notation, "Outgoing fax."

#### **v) Long Distance Telephone Charges**

Block billing of long distance telephone charges is not acceptable. Each long distance telephone charge, including those for sending out-going faxes, should be billed as a separate entry and should specify the date of the charge, the number called, the amount of time involved and the rate per minute charged. The reimbursement of long distance charges is limited to \$0.10 per minute. A plainly inadequate description made proper on appeal *is not a basis for reinstatement.*

#### **vi) Computerized Research Expense**

Computerized legal research is not a billable expense and approval to conduct computerized legal research applies to the time involved and not the computer service charges.

There are rare occasions where a specialized database is accessed for purposes other than legal research (e.g., a criminal records search) and a pass through only charge is appropriate. Because UIC has access to many such databases, *such charges will not be reimbursed without prior consultation with the claims handler and a time entry description that reflects such consultation.*

### **3. Non-billable Clerical/Secretarial Activities**

The UIC Guidelines for Claims Defense Counsel expressly provide that “[s]ecretarial and clerical work is not billable to Insurer.” Part V.C.5. *Such work is not billable regardless of whether the person performing the work is a secretary, clerk, paralegal or attorney.* The time for performing such work should not be entered on an invoice. Otherwise, the expenditure of wholly unnecessary and unwarranted time on the part of UIC’s auditors is required to disallow time billed to such work.

As examples and *not a complete list*, secretarial and clerical work includes: new file set-up, including the preparation of new matter forms; conflicts checks; word processing; transcribing; photocopying; collating; velobinding; stapling; hole-punching; receipt and distribution of mail; posting (i.e., stamping and/or metering and mailing); faxing; e-mailing; maintenance of office and attorney calendars (including setting diary or deadline “ticklers”); administrative file review; inserting documents into and retrieving documents from a file; maintaining order in the file; indexing file materials; tabbing sub files; stamping/numbering documents; organizing and assembling documents and exhibits; retrieving, assembling, organizing, indexing and inserting documents into various types of notebooks for depositions or trials; scheduling, rescheduling, canceling or confirming depositions, meetings, hearings, independent medical examinations, vehicle inspections, scene inspections or other events and/or the attendance of clients, witnesses and other persons at such

events; making travel arrangements; ordering and receiving records and reports; paying litigation expenses and/or following up on the payment of such expenses; making deliveries and pickups; filing pleadings in court; scheduling dates for hearings and settings unless local rules or courts require that an attorney do so; checking court dockets or with court clerks concerning the status of filings and/or court rulings; attempting to locate persons via the use of various directories, including internet-based directories, and/or by contacting family, acquaintances, employers, etc.; checking the status of service of process; and checking whether other parties have timely complied with discovery requests and/or communicating with representatives of other parties to ascertain if and when overdue discovery will be provided.

#### **4. Ordering Medical, Employment, and Other Records**

The entire process of ordering and receipting for records, whether medical, employment, worker's compensation, or otherwise is deemed clerical/secretarial work that does not require legal training or the exercise of professional judgment and, as such, is not considered billable by UUIIC.

Review of file materials or directories to obtain the names and addresses of medical facilities or businesses that may have relevant records is deemed clerical/secretarial.

Authorizations/releases allowing a firm to examine and/or obtain and copy records and/or subpoenas duces tecum requiring the examination and/or production of such records or copies thereof should be standard forms. These forms should be used routinely to obtain such records in most cases. The work of in-putting data to customize such forms for a particular case, such as the plaintiff's name, social security number, dates of treatment or employment, and generating it by computer is deemed clerical/secretarial.

The cover letters sent with such authorizations or subpoenas should be standard forms that likewise require only clerical/secretarial customization for a particular case. Follow-up telephone calls to determine if a hospital or employer or other custodian of records has received the authorization or subpoena, whether it intends to comply with same, and if so, when, and to answer any questions it may have that are necessary to determine if it has the records requested are also deemed clerical/secretarial.

Receipt and review of a notification that a particular medical facility or business does not have any of the records requested is deemed clerical/secretarial.

Firms should not bill for any of the foregoing activities that are performed on a routine basis.

In circumstances where a firm is required to take action that is not part of the routine process described above; the attorney must submit a time entry with sufficient particularity to permit UUIIC's auditing attorneys to

determine if such non-routine activity was other than clerical/secretarial, and therefore, billable.

In the event that standard form subpoenas, notices or other documents utilized in obtaining medical, employment or other records must be filed with a court as mandated by its rules, a reasonable amount of time for an attorney's review of same for accuracy and execution will be deemed billable. In most instances, .1 hour should be sufficient for review and execution of multiple such forms at one time. To the extent possible, all such forms seeking records from non-parties should be prepared and reviewed at the same time rather than in a piecemeal or serial fashion on different dates.

## **5. Preparation of Standard Form Notices, Pleadings and Discovery Requests**

Whenever appropriate and possible, the repetitive use of standard forms of notices, pleadings and discovery is encouraged. It takes far less time to secretarily/clerically particularize a previously highly perfected work product than to recreate it from scratch and avoids unnecessary duplication of effort. In addition, such standard forms are considered part of a firm's expertise, fund of baseline knowledge and experience that form a basis for the hourly rates it is paid. Obviously, lawyers should seek to provide better service for less cost as a matter of professional ethics whenever possible.

UUIIC will pay for the actual non-clerical/secretarial time reasonably necessary to prepare and review standard form documents; however, an invoice description of sufficient particularity will be required to justify charging in excess of the amount of time UUIIC's experience in auditing invoices from firms nationwide indicates is sufficient in the vast majority of cases for such preparation and review. That experience has shown that .1 hour is usually billed for the preparation and review of one or two page standard forms, including review of multiple copies of the same type of such forms at one time. When standard forms are substantially longer (e.g., interrogatories or document requests), the vast majority are prepared and billed at .2 hour. When the same standard form interrogatories or document requests are propounded to multiple parties, experience has shown that .1 hour is usually billed for review of each additional set.

## 6. In-Firm Conferencing

The provisions of UUIIC's billing guidelines concerning "In-Firm Conferences" provide that such conferences are not billable unless one *attorney* ("counsel") consults with another *attorney* to obtain *specific advice or counsel* on substantive or procedural aspects of the case that results in a more effective defense" and "sufficient detail of the subject of communication" is set forth "to demonstrate its relevance and value."

That guideline must be considered in conjunction with UUIIC's staffing philosophy that duplication of effort is to be avoided and one attorney should be designated to have primary responsibility for each case and should generally be assisted by no more than one associate and paralegal absent prior consultation. The attorneys to whom our cases are assigned should be generally competent and capable of handling the case entirely without the necessity of consulting with other attorneys. *Consultation between attorneys assigned to work on a case does not fall within the stated exception.*

UUIIC recognizes that on occasion in the handling of a case a particular issue may arise requiring some consultation to obtain *specific advice or counsel* from another attorney not assigned to the case who has superior training and experience or expertise and that it may be advantageous for the attorney to whom the case has been primarily assigned to consult with another such attorney in his/her firm rather than an expert from another firm.

In such instances, if the attorney handling the case consulted another attorney in the firm who had greater expertise in an area, the conference time would be considered billable provided sufficient detail of the subject of conversation is given to demonstrate its relevance and value and contribution to a more effective defense based on the specific advice or counsel obtained.

Conferences to discuss assignments of work to be done or instruct as to how the work should be done by an associate or a paralegal do not qualify. Conferences to discuss the results of a research assignment or to report on an interview with a witness or a vehicle or technical inspection do not qualify. *Conferences between attorneys assigned to the case to strategize about how it should be handled do not qualify.*

## 7. Improper and Multiple Staffing

As previously stated, UUIIC's staffing philosophy is that one attorney should be designated to have primary responsibility for each case and should be assisted by no more than one associate and paralegal absent prior consultation. Unless UUIIC has been consulted and approved the assignment of more than one partner to work on a particular case and the payment of each such partner at the approved hourly rate for firm

partners, UUIIC will pay the non-primary partner or partners assigned to the case only the approved hourly rate for firm associates.

UUIIC will not pay for more than one attendee at trial, hearing, court appearance, arbitration, mediation, deposition, conference call, meeting, or similar event unless UUIIC has been consulted in advance and has approved an additional attendee based upon demonstrated need and those facts are included in the invoice description of an entry billing for the additional attendee's time.

In addition, a balance should be struck between the efficiency a more experienced lawyer brings to a given task and the advantages of having the task performed by a junior lawyer or paralegal if competent to do so. UUIIC and the premium paying insured expect that matters referred to panel or staff attorneys will be handled by personnel (be that partner, associate or paralegal) at the most competitive and economical level able to competently handle the matter or item without substantial supervision, revision of work or training.

Duplication of the performance of work within the firm should be avoided.

## **8. Block Billing**

UUIIC's billing guidelines expressly provide that "[t]he time for each activity should be separately stated" and that "*grouping multiple activities under a single time charge greater than one-tenth of an hour ('block billing') is not acceptable . . .*"

This means that each task must be separately stated in a separate single line entry. Block billing is not payable. *Block billed entries are per se inadequate and are not made proper by an appeal that unblocks the time.* Courts as well as carriers will not accept block billing because it makes it impossible for the auditors to determine what time is asserted for any task and makes it impossible to determine or ascertain the reasonableness of charges for such tasks. For a more pragmatic reason, long narrative descriptions of multiple activities exceed the billing software limitation of viewable characters such that they simply cannot be reviewed by UUIIC's auditors, and therefore, cannot be paid.

## **9. Miscellaneous Non-Billable Activities**

Universal will not pay for

- Opening or closing files.
- Initial file review to assign the file.
- Reviewing or analyzing conflicts issues.
- Preparing, reviewing and/or following up on firm or vendor invoices.
- Preparing responses to inquiries or document requests by UUIIC's billing auditors or preparing appeals of adjustments to invoices.
- Attending seminars or continuing education.

- Reviewing advance sheets or other publications to stay abreast of the law.

## **10. Billing Appeals – Time Limitation**

All appeals concerning adjustments to or rejection of an invoice must be submitted *within 30 days after the invoice is processed for payment.*

## **VIII. HOW YOUR PERFORMANCE IS MEASURED**

The following factors are taken into consideration by UUIC in determining whether to continue the assignment of its cases to defense counsel and whether to grant requested rate increases:

1. The legal expertise demonstrated by you in handling the case. An ethical and aggressive defense of our insured is of paramount and overriding importance to us and our insured.
2. Your ability to quickly assess the assigned case with regard to liability and damages and the potential exposure.
3. Evaluations – How accurate are the settlement and evaluation ranges developed by you? Are your evaluations aggressive, innovative, and realistic or do they become increasingly more negative as trial approaches?
4. Whether you utilize creative resolution strategies and make effective use of ADR, early dispute resolutions and strategic pressure, with resultant closures.
5. Cycle time – All other factors being equal the shorter the shelf life the better. Are matters settled or resolved by you as soon as possible rather than being litigated for the sake of litigating?
6. Trial and Arbitration Results.
7. Cost Control – Attorney's fees and litigation expenses (particularly retained expert's fees) constitute a huge portion of our litigation budget, and those attorneys that demonstrate the ability and willingness to partner with us in controlling costs will be rewarded with more assignments. Additionally, UUIC considers whether your resolution plans are accurate, promptly updated if needed, and followed as intended.
8. How well Universal and the insured are kept informed by you.
9. Your compliance with Universal's policies and procedures, billing guidelines and Best Practices Guide.

10. Accessibility – The claims handler should be able to reach you by calling your office (or an alternate number provided by you) or receive a return call within 24 hours if you are not available when called.
11. Responsiveness – When something is asked of you (most often the status of the case or evaluation of particular legal issue), you should respond within 24 hours with the answer or to acknowledge the inquiry and advise when the response will be forthcoming. If we ask you to do something, we expect you to do it.
12. How well you act as an ambassador of goodwill to the insured and maintain Universal's reputation for providing quality service.