

RESOLUTION NO. 2010-01

**RESOLUTION OF THE BOARD OF DIRECTORS
OF THE VECTOR CONTROL JOINT POWERS AGENCY
REVISING THE LITIGATION MANAGEMENT POLICY**

WHEREAS, the VECTOR CONTROL JOINT POWERS AGENCY (“VCJPA”) is a Joint Powers Authority organized and existing in accordance with the laws of the State of California, and

WHEREAS, VCJPA operates as a “pooled liability” and “risk sharing self-insured” program, and

WHEREAS, it is in the best interest of all member entities to ensure the professional, competent, and cost-effective handling of the defense of litigated claims files that come within the parameters of this program, and

WHEREAS, it is the desire of the VCJPA to have a panel of pre-approved defense attorneys so to avoid any dispute on assignment to any defense attorney, and

WHEREAS, while recognizing that member entities shall have input into the selection of defense counsel to represent them in litigated and non-litigated cases, it is acknowledged that the qualifications of the approved defense attorney panel and the reporting requirements in litigated cases are crucial to a successful litigation management policy, and

WHEREAS, one of the purposes of claims and litigation management is to control legal costs and expenses without sacrificing case results or increasing settlements or verdicts, and

WHEREAS, this resolution is intended to replace any prior resolutions regarding the adoption of a General Liability Litigation Management policy. Resolution No. 2007-05 adopted in June 2008 is hereby repealed.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

PANEL DEFENSE COUNSEL GUIDELINES

These guidelines set forth the interdependent duties, responsibilities, and expectations of the member entity, the Third Party Administrator (TPA), the Litigation Manager and the assigned defense counsel. All approved defense counsel shall adhere to these guidelines.

A. **Panel of Approved Defense Attorneys**

Any member entity may nominate individual defense counsel or a defense firm to be included on the panel of pre-approved attorneys. VCJPA shall require nominated (not already on the approved panel) defense counsel to submit an application to them through the TPA’s supervising claims manager for approval to a panel of defense firms to be utilized by the organization for the

defense of its member entities. This application will be forwarded to the TPA for review and approval, with concurrence of the Litigation Manager.

The application shall include a resume of the firm, setting forth the experience of the individual attorneys, their areas of expertise, and the hourly or project rate proposed for the handling of the defense work for public entity clients. The application shall also include a completed "survey of insurance" form listing applicable information with regard to general liability, workers' compensation, automobile, and professional liability insurance with applicable effective policy dates, policy limits, excess coverages and applicable endorsements.

In the event that certain defense counsel has expertise in only certain areas of defense work, they shall be included on the panel only for the handling of cases which fall within their areas of expertise. The defense counsel will be selected by geographic area in most cases. Once approved for inclusion on the panel, the individual counsel will be eligible for retention as determined by the TPA with concurrence of the Litigation Manager, subject to the ultimate authority of the Executive Committee as outlined below.

Selection of defense counsel for each case shall be made by the defendant member entity after consultation with the TPA's supervising claims manager and the Litigation Manager and shall be from the various defense counsel included on the approved panel. Counsel selected must be qualified to handle the type of litigation required: *i.e.*, general liability, automobile liability, employment or labor law, contract law, police, land use, appellate work, etc.

If any dispute arises from the selection to the approved panel, assignment, retention or removal of a defense attorney from the panel, the matter shall be brought before the Executive Committee who shall reserve the ultimate right to approve the panel of defense attorneys for VCJPA and to add or delete individual counsel or firms from time to time.

In the event that a member entity wishes to utilize its own contract legal counsel or an employee attorney for the handling of its defense litigation, approval shall be obtained from the TPA and Litigation Manager. However, any fees or costs, including consultants and experts, incurred by a contract district or college attorney prior to the transition to a defense firm or defense counsel as approved by the Litigation Manager shall not be included in "Defense Costs" as provided in the Memorandum of Coverage.

B. Conflicts

The defense counsel selected and the law firm to which he/she belongs shall immediately notify the TPA in writing of any ethical or legal conflicts which would potentially disqualify them from representing any of the member entity defendants. In addition, by accepting a case assignment, defense counsel acknowledges that no ethical or legal conflicts exist. While on the approved panel and accepting defense work from the member entity or VCJPA, all defense counsel working on the case shall refrain from initiating any legal action against any of the member entities or VCJPA, either by way of complaint or cross complaint.

Further, Defense Counsel shall acknowledge that a conflict exists if they have or are handling any litigation or other matter as plaintiffs' counsel or for any cross-complainant against any member entity of VCJPA, even if they have not previously acted as defense counsel for the particular member entity being sued.

Finally, they shall agree to disclose in writing any special facts which would or could potentially disqualify them from representation of a particular member entity, commensurate with or shortly after the case assignment, or immediately upon discovery of such facts.

C. Correspondence and Pleadings

Copies of all correspondence shall be provided to the member entity and the claims adjuster assigned to the case, who will in turn copy the TPA's claims supervisor. For those cases which fall within the purview of the Litigation Manager, copies will also be provided to the Litigation Manager. It is important that defense counsel keep the handling claims adjuster, the Claims Supervisor and the Litigation Manager fully apprised of all significant developments.

Copies of the Complaint, Cross-Complaint, Answer, Motions for Summary Adjudication or Judgment (including Points and Authorities), shall be sent to the handling adjuster. All other pleadings shall be sent to the handling adjuster upon request.

After a case has been reported to one or more excess coverage providers, defense counsel shall ensure that additional copies of all correspondence and pleadings are forwarded to such excess coverage providers.

Defense counsel shall promptly respond to all correspondence or phone calls from the TPA's Claims Supervisor and Litigation Manager and keep him or her fully advised as to the progress of each case. Defense counsel shall cooperate with the TPA's Claims Supervisor and Litigation Manager in all other aspects of the Litigation Management Policy guidelines including helping to maintain the Litigation Manager's resource and motion's libraries, and completing expert witness and plaintiff counsel evaluations at the conclusion of the case upon request of the TPA or the Litigation Manager.

D. Depositions, Trials, Arbitrations, and Hearings

Notice of depositions, trials, mediations, arbitrations, and hearings shall be sent to all parties specified above who are to receive copies of correspondence.

E. Initial Case Analysis, Litigation Budget and Self-Performance Evaluation forms

Within 60 days of receipt of the assignment letter, defense counsel shall complete and return an Initial Case Analysis to the TPA with a copy to the Litigation Manager.

The Initial Case Analysis shall include, but is not limited to, a comprehensive plan and evaluation describing:

1. Legal issues to be resolved and action needed on each.
2. Whether the Complaint comports with the formal government claim.
3. Estimated cost of preparation of motions, discovery, and trial.
4. Settlement status and availability of early alternative dispute resolution (ADR) methods.
5. Evaluation of liability and suggested plan of action (settlement, trial, motions, further investigation).
6. Recommendations to the Litigation Manager and the TPA on whether to incur the expense of an expert or consultant, either immediately or at some later time. Guidelines for consideration of such initial investigation shall include, but are not limited to:
 - Whether there is evidence of significant comparative negligence of the plaintiff(s);
 - The dynamics or cause of the accident or incident in question;
 - In low impact/alleged serious automobile injury cases; and
 - In situations where there is no impact but alleged bodily injuries.

To assist in the projection of anticipated estimated legal costs, a Litigation Budget form supplied by the TPA must be completed by defense counsel to be submitted as part of the Initial Case Analysis. This form is used to set indemnity, legal, expense, and other cost reserves.

Unanticipated litigation activity may give rise to an under-reserved Litigation Budget. As soon as it is reasonably foreseeable that the case requires an updated Litigation Budget, defense counsel shall send a letter outlining the recommended increase or decrease along with information to support the recommendation. The Litigation Manager and TPA will closely monitor the basis for budget increases. If the Litigation Budget has been exceeded, no further payment of fees will be made until a revised Litigation Budget has been submitted and approved by the TPA. Significant deviations from the Litigation Budget will be taken into account when evaluating defense counsel's performance or assignment of further cases.

Within ninety (90) days after endorsed filed closing documents have been received, defense counsel shall fully compete and return the Self-Performance Evaluation form to the handling adjuster with a copy to the Litigation Manager. The purpose of this form is to provide an evaluation of the performance of plaintiff's counsel, any mediators, retained consultants or experts and an honest evaluation of the performance of defense counsel, including the initial budget projections, final costs, and the overall handling of the case.

F. Mandatory Status Reports

Status reports on cases in litigation are mandatory at least every ninety (90) days. Defense counsel shall report only on new developments since the last report. It is not necessary to restate the case facts or repeat information previously reported. The reporting diary can be extended if the TPA is notified of defense counsel's intention to put the file on an extended diary. Defense counsel shall respond to requests by the handling adjuster to provide a legal update within the

ninety (90) days.

The attorney handling the case shall prepare the status reports. Status reports shall include, but are not limited to, the following:

1. The ongoing strategy for defense or resolution of the case, including a factual analysis of issues related to liability and damages;
2. A description of planned discovery with a time table for completion;
3. A brief synopsis of the discovery completed since the last report;
4. Court dates including, but not necessarily limited to, mandatory settlement conferences, trial setting conferences, hearings on discovery, arbitrations, mediations, and trial dates, etc.;
5. New settlement demands and offers of settlement; and
6. Strategies for early resolution of the case.

Notwithstanding these periodic reporting requirements, defense counsel shall immediately notify the handling adjuster of any new settlement demands or confirmation of any new offers of settlement.

Furthermore, no later than thirty (30) days prior to a mediation, arbitration, or trial, the defense attorney shall provide a report, which shall include:

1. An assessment of the defendant member entity's liability;
2. An assessment of plaintiff's damages;
3. An assessment of the legal defenses (and probability of prevailing);
4. An assessment of the chances of prevailing at trial;
5. The verdict value assuming liability;
6. An appraisal of settlement value, considering verdict value and chances of prevailing;
7. The status of settlement discussions; and
8. The defense fees and costs to date, along with the estimated fees and costs through trial.

G. Further Evaluations and Reserve

Upon request by the TPA, the Litigation Manager, or any excess coverage provider, and at such other times as deemed necessary by defense counsel, written or oral evaluations of the case shall be furnished. These evaluations shall disclose any weaknesses or strengths of the case that have been discovered, any increase or decrease in anticipated costs, any recommended change in reserves and, if pertinent, settlement recommendations.

H. Settlements

Defense counsel shall not settle any litigation by way of any monetary offering without the prior approval of the TPA. The TPA shall seek such approval for settlement from the Litigation Manager or the VCJPA as appropriate.

I. Fees, Costs and Billings

All bills for legal services and related costs shall be submitted through the assigned claims adjuster to the supervising adjuster at least quarterly. All bills submitted shall describe the services and costs provided during the previous billing period. Bills shall include the following information to which such services or costs pertain: the name of the matter; a brief description of services performed; the date the services were performed; the number of hours, or fraction thereof, spent and by whom; the hourly or project rate for the services; a brief description of any costs incurred; and the signature of the assigned attorney.

The following expenses must be approved by the TPA **before being incurred:**

1. Experts or consultants - whether investigative (consulting) or testimonial.
2. Independent medical examinations (IMEs).
3. Outside investigators.
4. More than one attorney at meetings, interviews, depositions, hearings, appearances or other like engagements.
5. Filing of cross-complaint, counter-claims, etc.
6. Research in preparation for the filing of demurrers and motions.
7. Voluntary settlement conferences or ADR methods.
8. Co-defendant cost sharing agreements.
9. Research, preparation and filing of all motions.
10. Any statutory offers of settlement or responses to same.

Defense counsel shall not bill for duplicate services performed by more than one person unless specifically authorized by the TPA or, if appropriate, the Litigation Manager. There shall be no block billing accepted for payment.

Defense counsel submitting the bill is responsible for the content of the bill and will work directly with the assigned adjuster and Litigation Manager in resolving any problems or answering any questions.

Rates per hour or per project shall be approved by the Litigation Manager in consultation with the TPA at the time of selection to the approved panel of defense counsel or at the time of assignment of the case. The rates per hour or per project shall not exceed the amount approved by the VCJPA as set forth in Attachment A. The rates per hour or per project within the approved rate shall not be increased without at least ninety (90) days advance written notice to the Litigation Manager and the TPA, and only after receiving permission for such rate change from the Litigation Manager.

J. Audit of Defense Counsel

The supervising claims adjuster for the TPA and the Litigation Manager may periodically evaluate the performance of the defense counsel assigned to the case, and, if necessary, make recommendations to the Executive Committee concerning the retention of the defense attorney or firm on the approved panel.

As part of this performance evaluation, the Litigation Manager and the TPA shall periodically review the Initial Case Analysis, the Mandatory Status Reports, the Litigation Budget(s), and any legal billings and, if necessary, make recommendations to the Executive Committee concerning the possible removal of a particular defense attorney or defense firm from the approved panel. A member entity may appeal an adverse decision to the Executive Committee who shall have the final authority regarding the recommendations of the TPA and the Litigation Manager.

From time to time, the Litigation Manager and/or the TPA may elect to conduct audits of the litigated files being monitored by VCJPA, including the billings for legal services being performed by the assigned defense firm or individual defense attorney. The Litigation Manager reserves the right to order an independent legal bill audit if, in his or her discretion, the billings do not comply with these Litigation Management policies or are excessive or unwarranted. Payment of any invoices shall not constitute a waiver of VCJPA's right to seek reimbursement of any inappropriate or excessive billings disclosed by an independent audit or otherwise. If an independent legal billing audit discovers that certain billings are excessive or unwarranted, that defense attorney or defense firm may be requested to adjust the amount of the legal bill or be recommended for removal from the approved panel.

DUTIES OF THE LITIGATION MANAGER

The Litigation Manager shall:

1. Oversee the administration and management of all general liability claims, including those in litigation;
2. Perform a monthly review of all liability claims files as well as those claims for which a member entity or the Executive Committee has requested a specific review;
3. Review, at least quarterly, all open claims and, if necessary, recommend action to be taken on such claims;
4. Report to the Board or Executive Committee at each meeting summarizing the active claims that are of general interest and claims for which a member entity or the Board or Executive Committee has specifically requested a review;
5. Review monthly claims reports and report to the Board or Executive Committee

any significant trends that may be developing;

6. Monitor the legal sufficiency of selected formal government tort claims and any action to be taken on the claim;
7. Assist the member entities in training their personnel on the statutory government tort claims filing process, including the legal effect of taking (or not taking) certain actions on the formal claim;
8. Advise, where needed, on the setting and changing of reserves for all liability claims;
9. Monitor the reporting by the TPA to any excess insurance, reinsurance company, or excess pool all claims that meet the reporting requirements of such excess insurance, reinsurance company, or excess pool or that will likely exceed the VCJPA's retained limit;
10. Provide guidance to the TPA on the management of complex or "problem" claims;
11. Review the performance of the TPA to assure that they are complying with their contractual obligation including the Scope of Work and Performance Standards as specified in the Contract for Services;
12. Advise and assist the VCJPA Administrator in the selection of a TPA;
13. Recommend and/or request authority for the amount of money to be paid on particular claims for settlement outside of the TPA's settlement authority;
14. Answer inquiries from member entities regarding liability claims or procedures;
15. Establish, monitor, and continually update a panel of outside defense attorneys and law firms who have demonstrated proficiency in defending liability actions against public agencies, including a list of attorneys who have demonstrated special expertise in certain areas of litigation;
16. Act as a resource to the member entity and the TPA in the selection of the appropriate defense attorney and/or law firm;
17. Advise, where needed, on the selection of defense counsel in claims where litigation is anticipated but not yet filed;
18. Continually monitor and evaluate the effectiveness of the panel defense firms and the overall management of the litigated claims including, but not limited to, requiring the subject defense firm and/or individual defense attorney to submit


their total legal billings on any one file for an independent legal bill audit as more fully outlined above; and

19. Provide other services as may reasonably be requested by the Board, Executive Committee, the TPA or a member entity.

This Resolution was adopted by the Board of Directors at a meeting of the Board held on November 3, 2010, in the City of South Lake Tahoe, California, by the following vote:

AYES	<u>6</u>
NOES	<u>0</u>
ABSTAIN	<u>0</u>
ABSENT	<u>0</u>

By: 
President, Board of Directors, VCJPA

ATTEST: 
Program Administrator

ATTACHMENT A

The hourly rates of partners and other personnel assigned to a particular file shall be approved by the Litigation Manager and reported to the Board of Directors on a quarterly basis.