

RESOLUTION NO. 2017-01

RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE BIG INDEPENDENT CITIES EXCESS POOL  
ESTABLISHING THE REVISED LITIGATION MANAGEMENT PROGRAM

WHEREAS, the BIG INDEPENDENT CITIES EXCESS POOL, hereinafter BICEP, is a Joint Powers Authority organized and existing in accordance with the laws of the State of California, and

WHEREAS, the primary function of BICEP is to operate a "pooled liability" and "risk sharing" program, and

WHEREAS, it is in the best interests of all MEMBERS and a material requirement for operation of the risk sharing program 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 intent of BICEP to allow its MEMBERS to have direct input into the selection of DEFENSE COUNSEL to represent them in litigated cases while recognizing the initial decision and the ultimate authority on selected DEFENSE COUNSEL firms or attorneys should involve the BICEP Litigation Manager; and

WHEREAS, this Resolution establishes and sets forth the guidelines, policies and procedures of the revised Litigation Management Program and shall be incorporated by reference into the Master Program Document and into the Memorandum of Coverage as part of the material requirements for coverage of an occurrence or claim in a Memorandum Period.

NOW, THEREFORE, BE IT RESOLVED THIS RESOLUTION IS IMPLEMENTED AS FOLLOWS:

A. Definitions

The definitions of terms used in this Resolution shall be the same as those contained in the Joint Powers Agreement creating BICEP, the Amended Bylaws, the Master Program Document and the Memorandum of Coverage, unless otherwise expressly provided herein.

B. Certification of DEFENSE COUNSEL and Defense Assignments

1. Certification of OUTSIDE DEFENSE COUNSEL

Any MEMBER may nominate an outside individual defense attorney or an outside defense firm ("OUTSIDE DEFENSE COUNSEL") to be certified to handle BICEP cases on behalf of the MEMBERS. OUTSIDE DEFENSE COUNSEL interested in handling defense litigation for any MEMBER of this organization must submit information to BICEP through the supervising claims program manager ("Claims Program Manager") for inclusion on the certified list utilized by BICEP for the defense of its MEMBERS. This information will be forwarded to

the Litigation Manager for approval by the Board of Directors, subject to the provisions of this Resolution.

The information required for certification shall include a résumé of the attorney or firm that sets forth the experience of the individual attorneys, their areas of expertise, and the hourly or project rate(s) proposed for all partners, shareholders, associates, paralegals, and other support staff that will be handling defense work for any BICEP MEMBERS. The information shall also include a completed "Survey of Insurance" form (Attachment B) identifying applicable information with regard to general liability, workers' compensation, automobile, and professional liability insurance.

The Board of Directors shall have the responsibility of approving OUTSIDE DEFENSE COUNSEL for inclusion on the list of certified attorneys and shall also have the authority to add or delete OUTSIDE DEFENSE COUNSEL from time to time pursuant to recommendations by the Board of Directors. Recommendations of this nature shall be based upon defense evaluations by the Litigation Manager and the Claims Program Manager, as set forth below.

In the event certain OUTSIDE DEFENSE COUNSEL have expertise in only certain areas of defense work, they shall be included on the list of certified attorneys only for the handling of cases which fall within their areas of expertise.

The certification process is important to ensure BICEP litigation is being handled by experienced and capable OUTSIDE DEFENSE COUNSEL. MEMBERS retain the right to utilize OUTSIDE DEFENSE COUNSEL that have not completed the certification process but are in the process of being certified.

2. Certification of INHOUSE and CONTRACT CITY ATTORNEY DEFENSE COUNSEL

In-house counsel from the City Attorney's Office of a MEMBER ("INHOUSE DEFENSE COUNSEL") shall be deemed certified and approved by the Board of Directors and on the list of certified attorneys.

In the event a MEMBER wishes to utilize its own contract city attorney or an attorney within the same law firm for the handling of its defense litigation on any claim, the contract city attorney and/or his/her firm including an attorney within the same law firm ("CONTRACT CITY ATTORNEY DEFENSE COUNSEL") shall be deemed certified and approved by the Board of Directors and on the list of certified attorneys.

3. Defense Assignments (List of Certified Attorneys)

As to all cases that are required to be reported to BICEP, the assignment of a case to an individual OUTSIDE DEFENSE COUNSEL, or INHOUSE DEFENSE COUNSEL, or a CONTRACT CITY ATTORNEY DEFENSE COUNSEL (collectively "DEFENSE COUNSEL") shall be made by the MEMBER in collaboration with the Litigation Manager and the Claims Program Manager.

Regardless of the selection process, the defendant MEMBER is solely responsible and liable for and shall solely bear the financial responsibility of all defense costs, including fees. Only if until such time as its SIR amount is paid 100% in actual dollars in the form of defense costs, judgment and/or settlement and only if coverage of the claim is approved by BICEP shall BICEP provide payment of defense costs above the SIR amount, subject to the requirements herein, as a component of coverage of the claim but only as a reimbursement payment to or a payment on behalf of the MEMBER.

DEFENSE COUNSEL selected must be qualified to handle the type of litigation required (*i.e.*, police liability, general or auto liability, employment or labor law, inverse condemnation, appellate work, etc.). In addition, DEFENSE COUNSEL selected shall abide by these guidelines, policies and procedures set forth in this Resolution.

If, after consultation among the involved MEMBER, the Claims Program Manager, and the Litigation Manager, consensus cannot be reached regarding OUTSIDE DEFENSE COUNSEL to be assigned, and the MEMBER assigns the case for defense to a firm or individual counsel other than the one expressly preferred by the involved Litigation Manager and Claims Program Manager, the Board shall have the right to review the MEMBER's decision and decide on the assignment of OUTSIDE DEFENSE COUNSEL. The Board of Director's decision on the assignment of OUTSIDE DEFENSE COUNSEL shall be binding and final, with no further right of appeal to the Board.

The Board of Directors may deny coverage in its sole discretion if a MEMBER assigns a case to OUTSIDE DEFENSE COUNSEL without following the process set forth herein.

The MEMBER shall be responsible to contract with any CONTRACT CITY ATTORNEY AND OUTSIDE DEFENSE COUNSEL and agrees to pay a reasonable rate for the type of CLAIM at issue, not to exceed the rate approved in Attachment A. In the event the MEMBER would like to contract for a higher rate, the BICEP Board of Directors must authorize the higher rate prior to the MEMBER executing the contract. The Board of Directors shall consider the usual, customary and reasonable rate for the complexity of the CLAIM at issue in determining whether a rate is justified.

The approved rate shall apply towards satisfaction of the MEMBER's SIR. Any fees paid or incurred above the approved rate shall not apply towards satisfaction of the MEMBER's SIR or towards the total incurred defense costs of the claim should it exceed the MEMBER's SIR for determinations of coverage of a claim. Any fees paid or incurred above the approved rate by the MEMBER shall be at the sole responsibility and liability of the MEMBER, outside the scope of coverage of a claim or any determinations related thereof or thereto.

If the MEMBER elects to defend a CLAIM through using INHOUSE DEFENSE COUNSEL, BICEP will credit a maximum of \$150 an hour or the MEMBER's actual cost (as demonstrated by the MEMBER), whichever is lower, as DEFENSE COSTS for services in defense of a CLAIM. The INHOUSE DEFENSE COUNSEL shall maintain time records as outlined in the billing section below.

BICEP retains the right to associate its attorneys with the MEMBER's DEFENSE COUNSEL in the defense of any case the BICEP Board of Directors determines has DAMAGES exposure that will likely exceed the MEMBER's SELF-INSURED RETENTION. This right of association extends to petitions for relief from the claim filing requirements.

DEFENSE COUNSEL that has been approved to handle a matter will be sent an Assignment/Representation Letter (Attachment C). The letter shall be acknowledged and returned to the Claims Program Manager or the Litigation Manager. These LITIGATION MANAGEMENT PROGRAM guidelines shall be enclosed with the Assignment/Representation Letter.

The assignment of DEFENSE COUNSEL for any claim, reportable or potentially reportable to BICEP, shall involve the MEMBER, the Claims Program Manager, and the Litigation Manager. If the need for a transition in defense assignment arises on any claim, the process with respect to an initial assignment (set forth above) shall be utilized. Additionally, any disputes on assignment (as mentioned above) or the handling of a matter by either DEFENSE COUNSEL or the Litigation Manager shall be brought before the Board of Directors. The Board of Directors retains the right to assign or reassign defense of any claims reportable to BICEP and such decision on the assignment of DEFENSE COUNSEL shall be binding and final, with no further right of appeal to the Board.

C. Evaluation of Defense Firms

The Litigation Manager and the Claims Program Manager shall periodically review the Initial Case Analysis, the Mandatory Status Reports, the Litigation Budget, the Self Performance Evaluation, and any legal billings or statements to monitor and evaluate the performance of DEFENSE COUNSEL and, if necessary, make periodic recommendations to the Board of Directors concerning the possible removal of a particular DEFENSE COUNSEL.

Additionally, the Litigation Manager will conduct an annual Performance Review of DEFENSE COUNSEL to assure compliance with these LITIGATION MANAGEMENT PROGRAM guidelines. This review will be presented annually to the BICEP Board. DEFENSE COUNSEL shall be sent an Annual Certified Attorney Confirmation Letter confirming retention on the certified list subject to acknowledgment of continued adherence to BICEP's LITIGATION MANAGEMENT PROGRAM guidelines.

D. Conflicts

Subject to the rules of professional conduct for attorneys, DEFENSE COUNSEL selected and any law firm to which he/she belongs must certify that they have no ethical or legal conflicts which would in general disqualify them from representing any MEMBER as defendant. In addition, the specific DEFENSE COUNSEL assigned to the case shall certify that they will refrain from initiating and/or filing any claim for money or damages or any legal action against any MEMBERS of BICEP either by way of complaint or cross-complaint during the time that they are a member of the list of certified attorneys and accepting defense assignments from

BICEP. If the event a MEMBER files a complaint or cross-complaint against another member, the attorney or attorneys assigned to represent the suing MEMBER shall not represent the MEMBER in a matter covered or potentially covered by the coverage provided by BICEP.

DEFENSE COUNSEL agree to disclose any special facts which would or could potentially disqualify them from representation of any particular MEMBER, commensurate with or shortly after the case assignment or immediately upon discovery.

E. Performance Requirements for OUTSIDE DEFENSE COUNSEL

1. Communication

a. Correspondence and Pleadings

Upon request, OUTSIDE DEFENSE COUNSEL shall provide copies of all correspondence, pleadings and deposition transcripts to the involved MEMBER and the claims adjuster assigned to the case, both of whom shall in turn forward such copies to the Claims Program Manager and to the extent the case falls within the purview of the Litigation Manager, pursuant to the Master Program Document to the Litigation Manager.

OUTSIDE DEFENSE COUNSEL and the Litigation Manager together shall ascertain whether or not the case needs to be reported and has been reported by the claims adjuster to the excess/reinsurance coverage provider. If it needs to be reported but has not yet been reported, OUTSIDE DEFENSE COUNSEL and the Litigation Manager shall report such case immediately upon assignment.

After a case has been reported to an excess coverage provider, OUTSIDE DEFENSE COUNSEL shall ensure that additional copies of all correspondence and pleadings and any other documents or information as required by the excess coverage provider are forwarded to such excess coverage provider.

All OUTSIDE DEFENSE COUNSEL, shall promptly respond to all correspondence or phone calls from the Claims Program Manager and/or Litigation Manager and keep them fully advised as to the progress of each case. All OUTSIDE DEFENSE COUNSEL shall cooperate with the Litigation Manager in all other aspects of the LITIGATION MANAGEMENT PROGRAM, including but not limited to helping maintain the Litigation Manager's resource and motions libraries and completing expert witness and plaintiff counsel evaluations.

2. Depositions, Trials, Arbitrations, and Hearings

OUTSIDE DEFENSE COUNSEL shall provide notice of depositions, trials, arbitrations, and hearings to all parties specified above who are to receive copies of correspondence.

3. Case Analysis and Litigation Budget

Within sixty (60) days of retention in each case, OUTSIDE DEFENSE COUNSEL shall complete and return an Initial Case Analysis (Attachment E) to the handling claims adjuster, the Claims Program Manager, and the Litigation Manager.

Along with the Initial Case Analysis, OUTSIDE DEFENSE COUNSEL shall provide a comprehensive plan and evaluation describing:

1. Legal issues to be resolved and action needed on each.
2. Estimated cost of preparation of motions, discovery, and trial.
3. Settlement status and availability of ADRs.
4. Evaluation of liability and suggested plan of action (settlement, trial, motions, further investigation).

To assist in the projection of anticipated estimated legal costs, a Litigation Budget (Attachment F) must be completed by OUTSIDE DEFENSE COUNSEL, to be submitted as part of the Initial Case Analysis. This form is used to set indemnity, defense, expense, and other cost reserves.

Unanticipated litigation activity may give rise to an under-estimated Litigation Budget. As soon as it is reasonably foreseeable that the Litigation Budget will be exceeded, an updated Litigation Budget should be completed, along with OUTSIDE DEFENSE COUNSEL'S recommendation for any reserve increase. The Litigation Manager and the Claims Program Manager 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 Litigation Manager. Significant deviations from the budget will be taken into account when evaluating the performance of OUTSIDE DEFENSE COUNSEL.

4. Mandatory Status Reports

Status reports to the Litigation Manager are mandatory at least every ninety (90) days by OUTSIDE DEFENSE COUNSEL handling litigated cases that are reportable to BICEP. Only new developments on such cases since the last report need be disclosed; however, to the extent there are no new developments, a status report stating affirmatively there is nothing new to report is required. It is not necessary to rehash the case facts or repeat information previously reported. The reporting diary can be extended if the Litigation Manager is notified of an intent to put the file on an extended status report schedule.

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

1. The ongoing strategy for defense or resolution of the case, including but not limited to a factual and legal 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, arbitration and trial dates, hearings on discovery, etc.; and
5. New settlement demands.

As close as practicable to thirty (30) days prior to a mediation, arbitration, or trial, OUTSIDE DEFENSE COUNSEL shall provide a report, which shall include:

1. An assessment of the defendant MEMBER'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.

5. Further Evaluations and Reserves

OUTSIDE DEFENSE COUNSEL shall furnish written or oral evaluations of the case at the request of the assigned claims adjuster, Claims Program Manager, the Litigation Manager and/or any excess coverage provider and/or when OUTSIDE DEFENSE COUNSEL deems it appropriate or necessary to furnish such evaluations. 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.

6. Settlements

OUTSIDE DEFENSE COUNSEL handling a matter that is reportable to BICEP, shall not settle any litigation within the BICEP layer by way of any monetary offering without the prior approval of the MEMBER, the Litigation Manager and BICEP's Board of Directors.

7. Fees, Billings and Audits

All bills for legal services and related costs shall be submitted through the assigned claims adjuster to the Claims Program Manager at least quarterly, and to the Litigation Manager upon request. 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: (1) the name of the matter; (2) a brief description of services performed; (3) the date the services were performed; (4) the number of hours,

or fraction thereof, spent and the name of the person performing the work; (5) the hourly or project rate for the services; (6) a brief description of any costs incurred; and (7) the signature of the billing attorney.

The following expenses are to be approved by the MEMBER and, if appropriate, by the Litigation Manager before being incurred, unless they were previously approved in the Litigation Budget:

1. Experts - 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, including mediations, mandatory settlement conferences, trial, and appeals.
5. Travel out of town or outside of designated area for investigation (*i.e.*, for depositions, meetings with expert witnesses, etc.).
6. Filing of cross-complaints or counter-claims.
7. Research in preparation for the filing of demurrers and motions, especially motions for summary judgment.
8. Co-defendant cost sharing or liability sharing agreements.

OUTSIDE DEFENSE COUNSEL shall not bill for the same work done by two or more persons unless specifically authorized by the MEMBER or, if appropriate, by the Litigation Manager. There shall be no block billing accepted for payment.

OUTSIDE DEFENSE COUNSEL is responsible for the content of the bill and will work directly with the assigned claims adjuster in resolving any problems or answering any questions regarding the bill.

Rates per hour or per project shall not exceed the amount approved by the Board of Directors as set forth in Attachment A. Rates per hour or per project within the approved rate will not be increased without at least ninety (90) days advance written notice to the Litigation Manager and the Claims Program Manager, and only after receiving approval for such rate change.

From time to time, the Litigation Manager and/or the Claims Program Manager may elect to conduct an independent audit of any litigation being monitored by BICEP including billings for legal services being performed by OUTSIDE DEFENSE COUNSEL. The Litigation Manager reserves the right to order an independent legal bill audit if, in his or her discretion, the billings raise inquiries with respect to whether they comply with these LITIGATION MANAGEMENT PROGRAM guidelines or whether they may be excessive or unwarranted. Payment of any invoices shall not constitute a waiver of BICEP's right to seek reimbursement of any inappropriate or excessive billings disclosed by an independent audit or otherwise. If an independent legal bill audit is ordered, the Board of Directors, with input from the Litigation Manager and the Claims Program Manager, shall determine who shall pay for the legal bill audit.



8. Self-Performance Evaluation and Exit Analysis

Within ninety (90) days of the conclusion of a case, OUTSIDE DEFENSE COUNSEL shall complete and return the Self Performance Evaluation form (Attachment G) that was provided upon assignment of the case. This form shall be returned to the Claims Program Manager with a copy to the Litigation Manager. The purpose of this form is to assess the performance of the attorney defending the matter, the retained experts and consultants, opposing counsel, and the general handling of the case. The failure to provide this Self Performance Evaluation form may delay payment of any outstanding invoices.

F. Performance Requirements for INHOUSE and CONTRACT CITY ATTORNEY DEFENSE COUNSEL

1. Communication

b. Correspondence and Pleadings

Upon request, INHOUSE and CONTRACT CITY ATTORNEY DEFENSE COUNSEL shall provide copies of all correspondence, pleadings and deposition transcripts to the claims adjuster assigned to the case, who shall in turn forward such copies to the Claims Program Manager and to the extent the case falls within the purview of the Litigation Manager, pursuant to the Master Program Document, to the Litigation Manager.

INHOUSE and CONTRACT CITY ATTORNEY DEFENSE COUNSEL and the Litigation Manager together shall ascertain whether or not the case needs to be reported and has been reported by the claims adjuster to the excess/reinsurance coverage provider. If it needs to be reported but has not yet been reported, INHOUSE and CONTRACT CITY ATTORNEY DEFENSE COUNSEL and the Litigation Manager shall report such case immediately.

After a case has been reported to an excess coverage provider, INHOUSE and CONTRACT CITY ATTORNEY DEFENSE COUNSEL shall ensure that additional copies of all correspondence and pleadings and any other documents or information as required by the excess coverage provider are forwarded to such excess coverage provider.

All INHOUSE and CONTRACT CITY ATTORNEY DEFENSE COUNSEL shall promptly respond to all correspondence or phone calls from the Claims Program Manager and/or Litigation Manager and keep them fully advised as to the progress of each case. All INHOUSE and CONTRACT CITY ATTORNEY DEFENSE COUNSEL shall cooperate with the Litigation Manager in all other aspects of the LITIGATION MANAGEMENT PROGRAM, including but not limited to helping maintain the Litigation Manager's resource and motions libraries and completing expert witness and plaintiff counsel evaluations.

2. Depositions, Trials, Arbitrations, and Hearings

INHOUSE and CONTRACT CITY ATTORNEY DEFENSE COUNSEL shall provide notice of depositions, trials, arbitrations, and hearings to all parties specified above who are to receive copies of correspondence.

3. Case Analysis and Litigation Budget

Within sixty (60) days of retention in each case, INHOUSE and CONTRACT CITY ATTORNEY DEFENSE COUNSEL shall complete and return an Initial Case Analysis (Attachment E) to the handling claims adjuster, the Claims Program Manager, and the Litigation Manager.

Along with the Initial Case Analysis, INHOUSE and CONTRACT CITY ATTORNEY DEFENSE COUNSEL shall provide a comprehensive plan and evaluation describing:

1. Legal issues to be resolved and action needed on each.
2. Estimated cost of preparation of motions, discovery, and trial.
3. Settlement status and availability of ADRs.
4. Evaluation of liability and suggested plan of action (settlement, trial, motions, further investigation).

To assist in the projection of anticipated estimated legal costs, a Litigation Budget (Attachment F) must be completed by INHOUSE and CONTRACT CITY ATTORNEY DEFENSE COUNSEL, to be submitted as part of the Initial Case Analysis. This form is used to set indemnity, defense, expense, and other cost reserves. INHOUSE and CONTRACT CITY ATTORNEY DEFENSE COUNSEL shall submit a Litigation Budget so that expense and other costs may be appropriately reserved.

Unanticipated litigation activity may give rise to an under-estimated Litigation Budget. As soon as it is reasonably foreseeable that the Litigation Budget will be exceeded, an updated Litigation Budget should be completed, along with INHOUSE and CONTRACT CITY ATTORNEY DEFENSE COUNSEL'S recommendation for any reserve increase. The Litigation Manager and the Claims Program Manager 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 Litigation Manager. Significant deviations from the budget will be taken into account when evaluating the performance of INHOUSE and CONTRACT CITY ATTORNEY DEFENSE COUNSEL.

4. Mandatory Status Reports

Status reports to the Litigation Manager are mandatory at least every ninety (90) days by INHOUSE and CONTRACT CITY ATTORNEY DEFENSE COUNSEL handling litigated cases that are reportable to BICEP. Only new developments on such cases since the last report need be disclosed; however, to the extent there are no new developments, a status report stating affirmatively there is

nothing new to report is required. It is not necessary to rehash the case facts or repeat information previously reported. The reporting diary can be extended if the Litigation Manager is notified of an intent to put the file on an extended status report schedule.

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

1. The ongoing strategy for defense or resolution of the case, including but not limited to a factual and legal 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, arbitration and trial dates, hearings on discovery, etc.; and
5. New settlement demands.

As close as practicable to thirty (30) days prior to a mediation, arbitration, or trial, INHOUSE and CONTRACT CITY ATTORNEY DEFENSE COUNSEL shall provide a report, which shall include:

1. An assessment of the defendant MEMBER'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.

#### 5. Further Evaluations and Reserves

INHOUSE and CONTRACT CITY ATTORNEY DEFENSE COUNSEL shall furnish written or oral evaluations of the case at the request of the assigned claims adjuster, Claims Program Manager, the Litigation Manager and/or any excess coverage provider and/or when INHOUSE and CONTRACT CITY ATTORNEY DEFENSE COUNSEL deems it appropriate or necessary to furnish such evaluations. 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.

6. Settlements

INHOUSE and CONTRACT CITY ATTORNEY DEFENSE COUNSEL handling a matter that is reportable to BICEP, shall not settle any litigation within the BICEP layer by way of any monetary offering without the prior approval of the MEMBER, the Litigation Manager, and BICEP's Board of Directors.

7. Fees, Statements and Audits

All legal services and related costs shall be accounted for and maintained by INHOUSE and CONTRACT CITY ATTORNEY DEFENSE COUNSEL and shall be provided to the Litigation Manager upon request. All statements shall include the following information to which such services or costs pertain: (1) the name of the matter; (2) a brief description of services performed; (3) the date the services were performed; (4) the number of hours, or fraction thereof, spent and the name of the person performing the work; (5) the hourly or project rate for the services; (6) a brief description of any costs incurred; and (7) the signature of the billing attorney.

The following expenses should be approved, if appropriate, by the Litigation Manager before being incurred:

1. Experts - 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, including mediations, mandatory settlement conferences, trial, and appeals.
5. Travel out of town or outside of designated area for investigation (*i.e.*, for depositions, meetings with expert witnesses, etc.).
6. Filing of cross-complaints or counter-claims.
7. Research in preparation for the filing of demurrers and motions, especially motions for summary judgment.
8. Co-defendant cost sharing or liability sharing agreements.

INHOUSE and CONTRACT CITY ATTORNEY DEFENSE COUNSEL shall not bill for the same work done by two or more persons unless specifically authorized by the Litigation Manager.

INHOUSE and CONTRACT CITY ATTORNEY DEFENSE COUNSEL submitting the statement is responsible for the content of the statements.

From time to time, the Litigation Manager and/or the Claims Program Manager may elect to conduct an independent audit of any litigation being monitored by BICEP including statements for legal fees and costs being performed by INHOUSE and CONTRACT CITY ATTORNEY DEFENSE COUNSEL. The Litigation Manager reserves the right to order an independent legal bill audit if, in his or her discretion, the statements raise inquiries with respect to whether they comply with these LITIGATION


MANAGEMENT PROGRAM guidelines or whether they may be excessive or unwarranted. Payment of any invoices shall not constitute a waiver of BICEP's right to seek reimbursement of any inappropriate or excessive statements disclosed by an independent audit or otherwise. If an independent legal bill audit is ordered, the Board of Directors, with input from the Litigation Manager and the Claims Program Manager, shall determine who shall pay for the legal bill audit.

8. Self-Performance Evaluation and Exit Analysis

Within ninety (90) days of the conclusion of a case, INHOUSE and CONTRACT CITY ATTORNEY DEFENSE COUNSEL shall complete and return the Self Performance Evaluation form (Attachment G) that was provided upon assignment of the case. This form shall be returned to the Claims Program Manager with a copy to the Litigation Manager. The purpose of this form is to assess the performance of the attorney defending the matter, the retained experts and consultants, opposing counsel, and the general handling of the case. The failure to provide this Self Performance Evaluation form may delay payment of any outstanding invoices.

Resolution was adopted by the Board of Directors at a regular meeting of the Board held on the 21st day of September 2017, in Los Angeles, California by the following vote:

AYES	<u>5</u>
NOES	<u>0</u>
ABSTAIN	<u>0</u>
ABSENT	<u>1</u>

By:   
President, Board of Directors

Attest:   
Administrator

## Attachment A

The hourly not-to-exceed rate for OUTSIDE DEFENSE COUNSEL is established this 21st day of September 2017, at \$250.00.

The rate for a CONTRACT CITY ATTORNEY DEFENSE COUNSEL that is defending a case shall be the negotiated rate between the MEMBER and the firm, but shall not exceed \$250.00 an hour unless a higher rate is approved pursuant to Section E, subsection 3, Case Analysis and Litigation Budget, of this Resolution.

## Attachment B

# CERTIFIED ATTORNEY SURVEY OF INSURANCE

Please complete and return this form at your earliest convenience.

**Firm Name:** \_\_\_\_\_ **Completed By:** \_\_\_\_\_

**1. General Liability** Yes \_\_\_ No \_\_\_ Amount: \_\_\_\_\_  
Deductible or S.I.R.: \_\_\_\_\_ Claim/ Occurrence Basis: \_\_\_\_\_  
Carrier or Provider: \_\_\_\_\_  
Aggregate (If Applicable): \_\_\_\_\_  
Would you be willing to extend coverage to the Pool? Yes \_\_\_ No \_\_\_  
By way of: Certificate \_\_\_\_\_ Endorsement \_\_\_\_\_

**2. Professional Liability** Yes \_\_\_ No \_\_\_ Amount: \_\_\_\_\_  
Deductible or S.I.R.: \_\_\_\_\_ Claim/ Occurrence Basis: \_\_\_\_\_  
Carrier or Provider: \_\_\_\_\_  
Aggregate (If Applicable): \_\_\_\_\_  
Would you be willing to extend coverage to the Pool? Yes \_\_\_ No \_\_\_  
By way of: Certificate \_\_\_\_\_ Endorsement \_\_\_\_\_

**3. Workers' Compensation** Yes \_\_\_ No \_\_\_ Amount: \_\_\_\_\_  
Deductible or S.I.R.: \_\_\_\_\_ Claim/ Occurrence Basis: \_\_\_\_\_  
Carrier or Provider: \_\_\_\_\_  
Aggregate (If Applicable): \_\_\_\_\_  
Would you be willing to extend coverage to the Pool? Yes \_\_\_ No \_\_\_  
By way of: Certificate \_\_\_\_\_ Endorsement \_\_\_\_\_

**4. Automobile Liability** Yes \_\_\_ No \_\_\_ Amount: \_\_\_\_\_  
Deductible or S.I.R.: \_\_\_\_\_ Claim/ Occurrence Basis: \_\_\_\_\_  
Carrier or Provider: \_\_\_\_\_  
Aggregate (If Applicable): \_\_\_\_\_  
Would you be willing to extend coverage to the Pool? Yes \_\_\_ No \_\_\_  
By way of: Certificate \_\_\_\_\_ Endorsement \_\_\_\_\_

## Attachment C

*[Member's Letterhead]1*

*[Date]*

*[Attorney with Firm Name / Address]*

\_\_\_\_\_  
\_\_\_\_\_

*Re: [Case Name, Court Number, and Bicep Claim Number]*

*Dear \_\_\_\_\_:*

### **BICEP DEFENSE ATTORNEY(S) REPORTING REQUIREMENTS**

Our City is a member of the Big Independent Cities Excess Pool (BICEP), a governmental Joint Powers risk sharing pool that provides excess coverage to its member cities. BICEP directly covers its member cities, and may also purchase commercial excess liability insurance or reinsurance for them.

We have placed BICEP on notice of the referenced claim. Pursuant to agreements between BICEP and our City, BICEP will monitor the claim and may take an active role in overseeing the claim, litigation and settlement negotiations in cooperation with the City and you as its defense attorney(s). Depending on the amount of potential damages, commercial excess liability insurers or reinsurers may also become involved.

Under the agreements between BICEP and the City, you must adhere to the following reporting requirements. Your reports, marked Confidential Attorney Client Communication, should be addressed to the City with copies to BICEP and, if applicable, commercial excess liability insurers or reinsurers and monitoring counsel.

#### **1. PRELIMINARY EVALUATION.**

Within ninety (90) days of notice to BICEP of the claim or occurrence, your firm shall submit a letter to the City captioned Preliminary Evaluation and containing the following information under separate headings:

- a. Brief Description of the Case. [A sentence or short paragraph will do.]
- b. Procedural History
- c. Trial and Settlement Conference Dates
- d. Statement of Facts
- e. Applicable Immunities
- f. City's Liability
- g. Plaintiff's Comparative Fault

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1 Revise format to correspond to public agency



- h. Comparative Fault or Other Liability of Third Parties
- i. Indemnification or Insurance Available from Other Parties
- j. Damages
- k. Litigation Cost Estimate
- l. Settlement Demands/Offers
- m. Evaluation and Recommendations

2. LITIGATION PLAN AND BUDGET.

Along with the Preliminary Evaluation, your firm shall complete and return the attached Litigation Plan and Budget.

3. SUMMARIES OF COURT PROCEEDINGS AND DISCOVERY.

Your firm shall provide the City with timely letter reports of court proceedings, depositions and written discovery. These letters shall comment on the significance of any new developments.

4. PRETRIAL EVALUATION.

Within sixty (60) days of the trial date, and one week before any settlement conference, your firm shall provide the Member City with a letter report captioned Pretrial Evaluation that contains an update on the topics noted in Section 1.

5. SETTLEMENT OFFERS AND DEMANDS.

Your firm shall immediately communicate all settlement demands and offers to the City, BICEP's General Manager, BICEP's Claims Administrator, and when applicable, commercial excess insurers and monitoring counsel. The Member City shall not enter into a settlement that requires payment from BICEP's pooled funds without BICEP's consent.

6. COPIES TO BICEP AND COMMERCIAL EXCESS INSURERS.

Your firm shall direct copies of the reports in Sections 1 through 5 to BICEP's General Manager and BICEP's Litigation Manager, and to any excess insurers whose layers of coverage may be affected by a settlement or judgment. When requested, your firm shall also copy the reports to any monitoring attorney for BICEP and/or its excess insurers.

Copies to BICEP should be directed as follows:

BICEP

Resolution No. 2017-01

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BICEP Litigation Manager

Dwight Kunz

Claims Specialist

Carl Warren & Company

P.O. Box 25180

Santa Ana, CA 92799

These BICEP representatives may request you to add others to the circulation of your reports.

Thank you for your attention to the above.

Very truly yours,

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[Title]

## Attachment D

### BICEP INITIAL REPORT FORM

Send reports to Dwight Kunz (dkunz@carlwarren.com)

Please attach a copy of all claim documents (tort claim/pleadings/rejection/etc.)

1. Member:

2. Name of Claimant(s):

3. Claim number:

4. Date of Loss:

5. Date of Claim:

6. Member SIR: \$

7. Current financials:

Bodily injury reserve	\$	Bodily injury paid	\$
Legal expense reserve	\$	Legal expense paid	\$
Other reserve:	\$	Other paid:	\$
Total Incurred			\$

8. Brief Factual Summary:

9. Injuries of each plaintiff:

10: Demand by plaintiff(s):

11. Claim rejected? (If yes, please list date)

12. Complaint filed? (If yes, please list date)

13. Complaint served? (If yes, please list date)

14. Defense counsel assigned? (If yes, please list firm/attorney)

Adjuster Name:

Today's Date:

\*Please advise defense counsel to copy dkunz@carlwarren.com on all communications.

## Attachment E

### CASE ANALYSIS

(To be completed by counsel  
and returned within 60 days)

Covered Entity: \_\_\_\_\_  
Date Prepared: \_\_\_\_\_ Date of Loss: \_\_\_\_\_

Plaintiff(s): \_\_\_\_\_

Claim Number: \_\_\_\_\_

If multiple defendants, indicate those being represented: \_\_\_\_\_

Are punitive damages sought?  yes  no

If yes, against whom? \_\_\_\_\_

Was a governmental tort claim filed?  yes  no  n/a

Action by public entity \_\_\_\_\_

When? \_\_\_\_\_

Does the civil complaint conform to the governmental tort claim?  yes  no

If not, in what respect does it differ?

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Is there any additional information or documentation needed to preserve evidence or defenses?  
 yes  no

If so, please explain.

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Are independent experts needed?  yes  no

If so, please explain.

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What are plaintiff(s) claimed damages? (specify by plaintiff, type and amount)

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Have any of plaintiff(s) damages been verified? If so, please specify.

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Are reserves adequate? \_\_\_ yes \_\_\_ no If changes are recommended, in what amounts?

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Is investigation complete? \_\_\_ yes \_\_\_ no If no, please set forth your thoughts as to further investigation required:

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Plaintiff(s) allegations:

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Date suit filed: \_\_\_\_\_ Date of service: \_\_\_\_\_ Venue: \_\_\_\_\_

Fast Track: \_\_\_ yes \_\_\_ no

Is there a statute of limitations issue? Please specify:

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Your evaluation of liability exposure and damages (include pertinent statutes and case law):

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BICEP

Resolution No. 2017-01

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Proposed defense strategy at this time: List recommendations as to motions (i.e. demurrer, summary judgment, motion to strike, etc.) as well as discovery, cross-actions, etc.:

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Is arbitration recommended?  yes  no  binding  non-binding If yes, please explain.

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Is this a case for another form of alternative dispute resolution?  yes  no If yes, please explain.

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Projected time to: \_\_\_\_\_ trial \_\_\_\_\_ arbitration or mediation

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Members of firm whom you anticipate will be working on the case and their hourly rate:

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Projected legal costs.

Fees: \_\_\_\_\_ To Complaint \_\_\_\_\_ To Trial \_\_\_\_\_ Through Trial

Expenses: \_\_\_\_\_ To Complaint \_\_\_\_\_ To Trial \_\_\_\_\_ Through Trial

Please furnish information on plaintiff's attorney if known (size of firm, trial experience, orientation, specialization, general appraisal of capability):

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Defense Firm:

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In executing and returning this analysis, you are warranting that you have read and will comply with the policies and procedures of Big Independent Cities Excess Pool regarding defense litigation management and that there are no legal or ethical conflicts in your representation of defendant in this case. If more space is required to respond to any requested information, please asterisk the same and attach an additional sheet or sheets to the analysis.

Prepared by: \_\_\_\_\_

## Attachment F

### BIG INDEPENDENT CITIES EXCESS POOL LITIGATION BUDGET

Case Caption: \_\_\_\_\_  
Venue: \_\_\_\_\_

Defense Firm: \_\_\_\_\_  
Partner in Charge: \_\_\_\_\_

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#### Part I: Estimated Pre-Trial Fees and Costs

##### A. Estimated Pre-Trial Fees:

Instructions: 1. Estimate the hours each attorney and paralegal will bill for each activity. 2. Total the hours for each person. 3. Multiply the hours by the hourly rate to project the per person fees. 4. Add all of the projected fees to obtain the pre-trial fees total.

ACTIVITY	PARTNER HOURS	ASSOCIATE HOURS	PARALEGAL HOURS
1. Answer/Cross Complaint	_____	_____	_____
2. Demurrer	_____	_____	_____
3. Summary Judgment	_____	_____	_____
4. Legal Research	_____	_____	_____
5. Depositions	_____	_____	_____
6. Interrogatories	_____	_____	_____
7. Other Discovery	_____	_____	_____
8. Conferences	_____	_____	_____
9. Correspondence	_____	_____	_____
10. Witness Interviews	_____	_____	_____
11. Hearings, Motions	_____	_____	_____
Estimated Total Hours	_____	_____	_____

ACTIVITY ( <i>cont'd</i> )	PARTNER HOURS	ASSOCIATE HOURS	PARALEGAL HOURS
Hourly Rate	_____	_____	_____
Hours x Hourly Rate = Estimated Pre-Trial Fees	_____	_____	_____
Total Estimated Pre-Trial Fees: _____			

B. Estimate Pre-Trial Costs

Expert Fees: \_\_\_\_\_ + Independent Medical: \_\_\_\_\_ + Other Costs \_\_\_\_\_ =

Total Estimated Pre-Trial Costs: \_\_\_\_\_

Total Estimated Pre-Trial Fees & Costs: \_\_\_\_\_

Part II: Alternative Dispute Resolution

ADR METHOD	RECOMMENDED (Y/N)	ESTIMATED FEES	ESTIMATED COSTS	TOTAL
A. Mediation	( )	_____	_____	_____
B. Non-binding Arbitration	( )	_____	_____	_____
C. Binding Arbitration	( )	_____	_____	_____
D. Other _____		_____	_____	_____

Part III: Estimated Trial Fees and Costs

A. Trial Preparation (Fees & Costs) \_\_\_\_\_

B. Trial Fees: \_\_\_\_\_

C. Trial Costs: \_\_\_\_\_

Total Estimated Trial Preparation, Fees & Costs: \_\_\_\_\_

TOTAL RECOMMENDED LITIGATION BUDGET (Parts I, II, and III):

\$ \_\_\_\_\_





PROJECTED COMPARISON --- SETTLEMENT AND  
 DEFENSE COSTS AT EACH STAGE OF LITIGATION

<u>Settlement/Jury Value Range</u>	<u>Stage of Litigation</u>	<u>Anticipated Defense Costs &amp; Fees At Each Stage</u>
\$ _____ to \$ _____	Now	\$ _____
\$ _____ to \$ _____ (Including any discovery necessary for ADR)	Through ADR	\$ _____
\$ _____ to \$ _____	Through Discovery	\$ _____
\$ _____ to \$ _____	Through Pre-Trial/ Settlement Conference	\$ _____
\$ _____ to \$ _____	Through Trial	\$ _____

In executing and returning this analysis, you are warranting that you have read and will comply with Big Independent Cities Excess Pool policies and procedures regarding defense litigation management and that there are no legal or ethical conflicts in your representation of defendant in this case. If more space is required to respond to any requested information, please asterisk the same and attach an additional sheet or sheets to the analysis.

Prepared by: \_\_\_\_\_

## Attachment G

### Post- Resolution Evaluation Form

(Completed By Counsel and Returned within 90 Days after Closure of File)

How would you assess plaintiff(s) counsel's performance during the course of the litigation, including competence, integrity, and civility? Please elaborate:

How would you assess the performance of any consultants or experts (both plaintiff and defense)? Please elaborate:

How would you assess the performance of any mediators used in this case? Please identify the mediator and elaborate:

How would you assess the ultimate outcome of this case? Please elaborate:

Did ultimate fees and costs come within the initial Litigation Budget submitted at time of assignment? If not, why? (Note: If you subsequently submitted a revised or pre-trial Litigation Budget, please comment on whether the ultimate fees and costs were within those respective budgets.)

Do you have any suggestions that would improve the handling of a case of this type and complexity in the future? Please elaborate.

Defense Firm \_\_\_\_\_

Responsible Handling Attorney \_\_\_\_\_

Date: \_\_\_\_\_