

## LOUISIANA OFFICE OF RISK MANAGEMENT CLIENT INSTRUCTIONS FOR THE TRANSPORTATION UNIT

The client instructions will provide specific requirement for ORM's Third Party Administrator (TPA). Also included are expected general claims handling practices, this is not an all-inclusive list nor does it address all aspects of claims handling. The TPA should continue to use industry standard claim's handling practices, follow applicable state statutes, along with their internal claim's handling procedures in order to provide professional services which should protect the interest of the State of Louisiana and offer exceptional customer service to the state agencies.

### GENERAL TRANSPORTATION CLAIMS INFORMATION:

#### **ORM INTERNAL AUTHORITY DESIGNATION AND CONTACT INFORMATION**

The primary contact for ORM's Transportation Unit (Automobile, Aviation and Wet Marine) is the ORM transportation (TR) supervisor. The ORM TR supervisor is responsible for handling the RSA process, approval of payments in excess of \$25,000 (excluding payments for defense counsel billing via Acuity/Trial Net), review of new and amended lawsuits, attorney appointment request, reserve and budget increases, and responding to claims questions from the TPA. If a submitted request is above the ORM supervisor's authority level, the supervisor will route the request to the appropriate person(s) within ORM. The ORM claims manager, should be copied on all claims related email correspondence. If the ORM supervisor is out of the office, the claims manager will respond to time sensitive requests. Contact information for the Transportation Unit is:

Lisa Torres – ORM transportation supervisor	225-342-8433	<a href="mailto:Lisa.Torres@la.gov">Lisa.Torres@la.gov</a>
Rita Major – ORM claims manager	225-342-6059	<a href="mailto:Rita.Major@la.gov">Rita.Major@la.gov</a>

#### **CLAIM SET UP INFORMATION**

All claims should be assigned an ORM claim number based on the following format: Fiscal Year (FY), letter assigned to involved coverage, DOL, first two letters of claimant's last name, and four random numbers. The alleged date of loss on the reported claim or lawsuit determines the FY to be assigned. Assigned coverage letters are: F = auto physical damage (first party auto claims), L = auto liability claims, M = marine claims, and A = aviation claims.

*Example:* ORM Claim 17L0804SM5821

This is an auto liability claim, claimant's last name is Smith, the date of loss is DOL 08/04/2016 (date falls under FY17), and 5821 were the randomly assigned numbers.

The ORM agency location code (Sedgwick's nomenclature is unit #) is a four digit number. A listing of agency location codes is provided via an excel spreadsheet labeled as ORM Master Location Listing – Effective X-XX-XXXXX. This information is updated periodically as agency changes occur. When sitting up a claim, the location code is determined based on the agency that was directly involved in the incident. Thus, a lawsuit describing an accident involving a state trooper and naming Louisiana State Police would be set up under the troop where the state trooper is assigned, e.g. OSP – Troop A Baton Rouge. A lawsuit naming Louisiana Department of Health, but the incident involves the Office of Aging & Adult Services, should be set up under the Office of Aging & Adult Services.

#### **LAWSUIT PROCESSING AND DEFENSE COUNSEL ASSIGNMENT**

Lawsuits are usually received at ORM when ORM is served with a lawsuit or when a lawsuit is forwarded to ORM by the AG's office or the agency after they have been served. Upon receipt of the lawsuit, ORM will:

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- Review the lawsuit to ensure a State entity and/or State employee has been named as a defendant.
- Once verified, ORM will check the TPA's claims management system to see if a claim was previously received for this matter.
  - If there is already a claim set up related to the lawsuit, ORM will forward the lawsuit to the TPA advising of its receipt.
  - If there is not a claim set up, then ORM will forward the lawsuit to the TPA for claim set up.
- The TPA should set up the claim immediately and assign an examiner, ORM claim number, and the TPA file number.
- Once the claim set up is complete, ORM will prepare the required *Attorney General Appointment Form*. The form is submitted to the AG's office for appointment of counsel.
  - AG appointments to in-house Assistant Attorney General do not require concurrence from ORM.
  - AG appointments to contract counsel require concurrence of the ORM Assistant Director for Litigation Management and the State Risk Director.
- If appointment of counsel is made to a contract attorney, the AG's office must also confirm counsel has no conflicts related to the litigation.
- Once defense counsel has been appointed, the examiner will receive a copy of the completed appointment form listing the assigned attorney, start date and required signatures.
- The TPA will send an *Appointment for Professional Legal Services* form and a *Counsel's Acknowledgment and Acceptance of Appointment* (CAAA) agreement to contract counsel. The assigned counsel must acknowledge the appointment by executing and returning the CAAA agreement.
- If the TPA receives a lawsuit directly from the agency, they should immediately forward the lawsuit to [ORM-Lawsuits@la.gov](mailto:ORM-Lawsuits@la.gov) and copy the ORM supervisor.
- ORM may receive subsequent copies of the lawsuit as service is made on the various State entities or State defendants. The ORM supervisor will forward these to the TPA to document service made. The examiner must forward the documents to the assigned defense counsel.
- If ORM receives an amendment/supplement to a lawsuit from a State agency, the ORM supervisor will forward the suit to the AG's office and copy the TPA examiner (if the AG sent the amended suit to ORM, there is no need to forward it to the AG's office).
  - If new State defendants were added to the suit, the ORM supervisor will note this in the email and a transmittal will be sent to the AG for a 13:5108.1 determination and review for possible conflict.
    - ◆ If there is a conflict between state defendants, a different attorney will be assigned to defend the newly added defendant.
  - The TPA should review the suit for new allegations or damage claims.

### **COMMUNICATIONS BETWEEN THE TPA AND ORM**

As noted above, the claims manager should be copied on all claims related emails. If there is a critical date or some urgency, flag email as high importance. The subject line for all emails should follow the following basic format:

Request being made | Claimant's Full Name | Claim Number | Critical Date (if applicable), other brief description

*Examples:* Expense Reserve Increase | Sam Somebody | 3017XXXXXXX

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Budget Increase | Clarence Claimant | 3017XXXXXXX | XYZ Lawfirm, \$175K  
SF-3 RSA | Samantha Somebody | 3015XXXXXXX | 15L0204SOXXXX | Critical Date: Trial 08-13-15  
PYMT: Client Authority | Carrie Claimant | 3016XXXXXXX  
Sean Somebody | 3016XXXXXXX | inquiry or cvg question or follow up

Emails sent with specific inquiries/request should be replied to within the same email thread. If follow up inquiries are made related to the initial inquiry, the initial email thread should be forwarded with the new inquiry. This will keep the email thread on a specific subject intact and easily reviewed.

**\*\*Remember, if the email included an attachment, using the forward button will keep the attachment intact in email thread\*\***

### **CATASTROPHIC CLAIMS**

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

### **RESERVES**

Initial reserves must be established within seven (7) calendar days of the receipt of the claim. Initial reserves are to be reviewed within 60 days after receipt of the claim, or sooner if more becomes known about the claim. The TPA has total incurred reserve authority of \$250,000. ORM reserve authority is needed to increase reserves with a total incurred reserve of greater than \$250,000.

Reserve requests shall be sent in a specific email format to the ORM supervisor with a copy to the claims manager, refer to email template below. If the reserve request is above the ORM supervisor's authority, it will be routed to the appropriate person within ORM for approval. Reserve increase requests and corresponding ORM approval shall be placed in the TPA's claim management system. A monthly report of all reserve changes and ORM authority must be submitted to ORM at the end of each month for auditing purposes.

The email subject line should be formatted in the following manner:

Reserve Increase | Claimant Name | Claim Number

***Reserve Email Template (if one of the reserve buckets is not being increased, write "No increase" next to the appropriate reserve bucket):***

Current expense reserve is:

Current damage reserve is:

Increase expense reserve to:

Increase damage reserve to:

If increase is approved the total for all reserves on this claim will be:

Reason for increase request: *provide a brief description for the increase for each "reserve bucket" being increased, e.g. Additional experts (IME and a vocations rehab) are being retained, thus the need to increase the expense reserve; Based on further information received through discover, the liability evaluation has been reconsidered and additional medicals were presented, therefore loss reserves are being increased.*

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ORM reserve authority is not required for the following reserve changes nor should these be included on the monthly reserve report:

- A decrease in the reserve where the total incurred is over \$250,000.
- Funds are shifted from one reserve subcategory to another within a reserve bucket (expense, damages), but the total incurred amount is unchanged.

### **RESERVES RELATIVE TO AG PAYMENTS ONLY**

For the AG payments here is how we need to handle the four scenarios:

1. **Open** claims with current total incurred plus AG payment < \$250k
  - a. Do not enter the payment and send to examiner to review for reserve adjustment and enter payment manually
2. **Open** claims with current total incurred plus AG payment > \$250k
  - a. Do not enter the payment and send to examiner to review for reserve adjustment and enter payment manually
3. **Closed** claims with current total incurred plus AG payment < \$250k
  - a. Automatically update the reserve to cover the payment and then enter the HIS payment.
4. **Closed** claims with current total incurred plus AG payment > \$250k
  - a. Do not enter the payment and send to examiner to review for reserve adjustment and enter payment manually

### **DENIAL OF CLAIM**

First Party Claim – **After investigation** of the presented claim is complete, if it is determined there are exclusion(s) that apply to the occurrence (full or partial), the TPA examiner will prepare a denial letter to the involved agency. The denial should be reviewed and approved by examiner's supervisor. The letter must then be submitted to the ORM supervisor for approval. The email should contain the examiner's file evaluation (EV) note. Once approved by the ORM supervisor the denial can be issued to the agency. The claim file should be properly documented to support the denial.

In the event a denial is appealed by the agency, the TPA's Transportation Unit's team lead and unit manager will review all applicable documentation and issue a supplemental letter to the agency advising them of the final decision.

Third Party Claim – **After the investigation** is complete and a liability determination made, if the TPA finds no liability against the State, then a denial letter should be prepared by the examiner. The denial should be reviewed and approved by examiner's supervisor. The TPA supervisor should then submit the letter to the ORM supervisor for approval. The email should contain the examiner's file evaluation note. The EV note should include investigation summary and reasons for denial. Once approved by the ORM supervisor the denial can be issued to the claimant or claimant's attorney, if claimant is attorney represented.

In the event a denial is appealed by a claimant, the TPA's Transportation Unit's team lead and unit manager will review all applicable documentation and issue a supplemental letter to the claimant advising them of the final decision.

### **GENERAL CLAIM INVESTIGATION AND HANDLING PRACTICES, THIS IS NOT AN ALL-INCLUSIVE LIST**

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ORM's TPA is responsible to perform a thorough investigation of all claims. Claims should be investigated to allow for assessment of coverage and/or liability and to accurately document the claim file in order to support settlement or denial of first party or non-litigated third party claims.

A denial of third party claim does not preclude a suit being filed, thus documentation of the incident, statements and contact information (personal and work contact) of the involved parties and witnesses, photographs, surveillance video, diagrams, etc. are crucial. Preservation of all evidence should occur, this includes documenting condition of the insured vehicle prior to repairs. It may include retaining the insured vehicle, if it was a total loss until on needed evidence/documentation has been obtained from it.

A claim received in a litigated status does not negate the TPA's responsibility to investigate the claim and obtain needed documentation - identify involved parties and witnesses, discuss loss with agency representative and involved employees, etc. The TPA must be actively involved in the management of a litigated claim, as discussed further under the Litigation Management caption.

The following are basic claim requirements and may relate to first party and/or third party claims:

- Personal or telephone contact by the TPA examiner must be made with the claimants on all cases within one (1) business day of receipt of the claim. If claimant is attorney represented, contact should be made with their attorney upon receiving a letter of representation for the attorney.
  - Therefore, when the examiner is making contact with the claimant it is very important to have all the information submitted by the agency when the loss was reported, i.e. DA2041, agency investigative info, photographs, etc. The examiner may only have one chance to obtain information directly from the claimant and some questions may need to be made based on the information received from the agency/insured driver.
- Contact by mail will suffice only in those instances where personal or telephone contact is not possible. This should be documented in the claim notes and the contact letter attached to the file.
- Once direct contact is made with claimant, a follow up letter or email should be issued that confirms contact was made and summarizes any request made to claimant, e.g. completion and return of attached forms, need to obtain and provide estimates, an auto appraiser will be sent to inspect vehicle, claim number, examiner's contact information, etc.
- Medical releases and copies of all pertinent medical records should be requested and evaluated by TPA on claims where liability is likely.
- Determination of liability on third party claims should not be delayed due to "obtaining medical records".
- TPA examiner shall send a claim acknowledgment to the person that reported the claim, this should include the TPA claim number and the name and contact information for the assigned examiner.
- Personal or telephone contact must be made with the agency personnel having knowledge of the claim within two (2) business days following receipt of the claim.
- Contact and an interviews with all personnel involved in the claim **must** be made.
- Recorded interviews/statements must be taken from the claimant and all witnesses in all cases where there is injury or where liability is questionable. Recorded statements must be summarized and included in the file notes. The audio file indicator should be marked appropriately in the TPA's claims management system.
  - If the claimant or witness will not allow a recorded statement, this must be documented and explained in the claim file notes. The examiner must still perform a non-recorded interview.

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- If the claimant is attorney represented, the examiner should seek permission to interview from claimant's attorney. The request and outcome of this request must be clearly documented in the claim file.
- Recorded statements and/or interviews should not be "cookie cutter". Although there is specific information that must be stated and obtained in every interview, the examiner should explore and further expound upon new or relative information that comes to light during the interview process. In some instances, a question asked that is not satisfactorily answered, should be asked again in a different manner during the interview process. This may lead to obtaining the information that was initially not provided satisfactorily.
- Agency investigative reports and photos should always be obtained. Additional documentation such as police reports, B.A.C. test results, etc. should be obtained when applicable and appropriate.
  - Police and fire reports can usually be obtained directly by the examiner from the involved entity. This will result in a cost only for the police report (which does not require pre-approval from ORM). Utilizing an IA to obtain a police/fire report results in additional cost for the vendor's services plus the report fee. This would also require approval from ORM to retain the IA's services.
    - ◆ Most cities or parishes will allow online ordering of reports or have a form to complete, mail-in with payment, and then the report is provided
- The TPA will report all bodily injury claims to ISO/ Index Bureau, as soon as possible and make repeated queries on long term claims to identify any accidents that may have occurred after the subject claim.
- All claims involving significant bodily injury and/or property damage or questionable liability should be considered for independent investigation assignment.
  - Once the need for an expert or IA has been identified and approved, the TPA will retain the services of and contract with the expert.
- The TPA will utilize economic experts when necessary to evaluate economic damages and will retain other experts as needed to properly defend and evaluate the claim. Although the need for experts usually arises on litigated claims, the need could occur on a non-litigated claim. ORM approval is required.
- ORM is to be notified immediately if the exposure assessment or demand exceeds \$100,000.00 for all non-litigated claims.
- Working in the ORM (the client's) best interest, the TPA should make every effort to obtain the best possible pricing from all vendors.

### FIRST PARTY AUTO CLAIMS – PHYSICAL DAMAGE

In conjunction with general claim investigation and handling practices, the following applies to first party auto coverage and includes specific ORM requirements and expectations.

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Once the investigation of the claim is complete and the damages have been established, Auto Physical Damage claims are to be maintained on a 30-60 day diary to follow up for timely payment and resolution. However, first party claims opened over 30 days should be an exception rather than the “norm.”

### **PHYSICAL DAMAGES CLAIM - NOT INVOLVING TOTAL LOSS OF VEHICLE**

- The TPA should obtain an independent auto appraisal:
  - If the shop estimate(s) exceed \$5,000.00, or
  - If the vehicle is not drivable, or
  - If the agency has been unable to obtain two shop estimates within 30 days of the loss
- If the vehicle was towed, the examiner should ensure towing/storage bills are obtained.
  - If the towing cost exceeds the policy sublimit ensure the sublimit is properly applied to the claim
- If the vehicle is drivable and the damage is less than \$5,000, the agency should secure two repair estimates. The lower estimate will be utilized for determining the claim value.
  - It is still the examiner’s responsibility to review damages to the vehicle in relationship to the estimates received and ensure the estimates do not include previous (older) damage or betterments.
- If the vehicle is more than two years old, repairs should include the use of reconditioned parts. Should these not be readily available, aftermarket parts should be used. An exception will be made when a new part is necessary to maintain the mechanical safety of the vehicle.
- Payment of cost of repairs to a State vehicle will be made after the work has been completed per invoices submitted. Payment is usually made directly to the repair facility. An exception can be made when an agency seeks reimbursement for repairs they have paid and proper support documentation is submitted.
- If the agency has in-house repair facilities and wishes to perform the repairs, they must obtain approval by ORM before any repairs are undertaken.
  - Material costs for parts, supplies and shipping expenses are reimbursable if an itemized worksheet with related invoices and support documentation is submitted.
  - Only state employees who possess experience in auto repairs should be engaged in the repair of state vehicles. The privilege of a state agency to do its own repairs may be revoked if substandard repairs are recognized by TPA and/or ORM.
  - Agency employee labor cost associated with the repair is not reimbursable under the claim.
- The State is exempt from paying sales tax.
- State employees using their personal vehicle on State business, with proper authority and within the course and scope of their employment, will be eligible for a limited reimbursement of damages to their vehicle. Restrictions apply and certain criteria must be met in order to qualify for the program, the examiner should refer to the policy for specifics.
  - This reimbursement is limited to the lesser of (1) the amount of the deductible applicable under the auto insurance policy covering the damaged vehicle, or (2) the expenses incurred for actual repairs to said auto, neither which to exceed \$1,000.
  - A copy of the employee’s declaration page for their personal auto insurance must be obtained, if payment is for reimbursement of their deductible.

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- If payment is for reimbursement of damages, a copy of the repair shop's detailed estimate along with proof of payment must be obtained.
- This reimbursement provision applies only when a personally-owned vehicle sustains damage due to the following: (1) Collision with another object; (2) Vehicle overturns; (3) Vandalism; (4) Theft; or (5) Impact with a bird or animal.
- It does not provide reimbursement for losses caused by: (1) Glass Breakage, unless caused by items 1 through 5 above; (2) Loss caused by falling objects; (3) Acts of God; or (4) Flood.
- Further restrictions and criteria apply; thus the examiner should refer to the policy for specifics when this coverage is triggered.

### **PHYSICAL DAMAGES CLAIM - TOTAL LOSS OF VEHICLE**

- An appraisal is done to establish the actual cash value of a State vehicle that is deemed to be a total loss. A salvage value is determined by obtaining (3) salvage bids. The highest bid will be deducted along with the \$1000 deductible when payment is made.
- The TPA will send written notice to Louisiana Property Assistance Agency (LPAA) on a state vehicle that is a total loss. The notice must include the asset number. This will inform LPAA that the vehicle was deemed to be a total loss and an insurance claim has been paid.
  - An exception will be made with vehicles that are flooded as a result of a federally declared disaster. In those instances, salvage may be disposed of through Copart.
  - If the vehicle should not be disposed of by LPAA due to a pending third-party claim or current litigation, ensure this is communicated in the notice to LPAA, as well as to the agency.
  - LPAA notification should be sent to the clerical supervisor. As of this date, Vanessa DeMolle is the clerical supervisor. Her contact information 225-342-6851, [vanessa.demolle@la.gov](mailto:vanessa.demolle@la.gov)
  - Additional contact at LPAA is Michael Proctor, Ass't Director, 225-342-3455, [Michael.proctor@la.gov](mailto:Michael.proctor@la.gov)
- A Proof of Loss is required on all total loss vehicles.
- Claim payments for total losses can be issued directly to the vendor supplying the replacement vehicle with proper support documentation. The claim payment may also be issued to the agency if the vehicle was replaced and payment for the replacement vehicle was made by the agency. Proper support documentation such as invoices, bill of sale, and proof of payment must be submitted.
- Per Title 37, Chapter 7, Subsection 709-J of the Louisiana Administrative Code (LAC), "If repair or replacement of a state vehicle is not completed within 12 months of the loss date, or if approval is not obtained from the Commission of Administration within the same period of time for expenditure of insurance proceeds for some other purpose, the claim file will be closed".
  - Letters should be sent to the agency sixty days prior to the 12-month deadline, advising the agency of the upcoming prescription date and the closure of the claim should the vehicle not be replaced/repared prior to that date.
  - Should the agency advise they do not wish to replace the vehicle and initiates an inquiry whether the claim funds may be used for another purpose, then the examiner will need to follow the procedures for an Alternate Use of Funds Request.



**AUTO LIABILITY SPECIFIC INFORMATION**

In conjunction with general claim investigation and handling practices, the following applies to auto liability coverage and includes specific ORM requirements and expectations.

- A DA-2041 for Auto Liability and Auto Physical Damage claims or a DA-2073 for insured glass claims should be completed and submitted by the reporting agency and be uploaded to the claim file.
- The examiner will follow general handling guidelines previously discussed.
- The TPA will obtain a copy of the claimant's vehicle registration to document ownership.
- The TPA will obtain a copy of the liability insurance declaration page to ensure that it is compliant with State law requiring minimum limits of liability coverage.
  - It will be necessary to contact the claimant's insurer/broker directly to confirm that the insurance information is current. This contact and its results should be documented in the TPA's claims management system.
  - The uninsured claimant driver/owner will be barred from recovering the first \$15,000 of bodily injury and the first \$25,000.00 of property damage, see R.S. 32:866.
  - An injured guest passenger will not be barred from making a bodily injury claim even if the driver/owner is uninsured.
  - Proof of insurance is not required on claimant vehicles that are legally parked when struck by a State vehicle.
- Claimant inoperable vehicles should be moved to a repair facility and arrangements made for an appraisal of damage as soon as possible.
- An independent damage appraisal is to be done when damages are greater than \$2,500.
  - The use of an auto appraiser, such as PDA, does not require pre-approval from ORM.
  - If no injury is involved and the estimated damage is below \$2,500 it will not be necessary to obtain an independent appraisal. In those instances, two body shop estimates will suffice. Payment will be made per the lower estimate.
    - ◆ It is still the examiner's responsibility to ensure repair estimates only include damages due to the subject accident and do not include pre-existing damage or normal mechanical/wear and tear items.
- Examiners will have authority to assign an independent auto appraiser below the \$2,500 damage threshold when the examiner questions the legitimacy of the claimed damages or when the independent damage appraisal will provide other information needed in order to properly adjust the claim.
  - Pre-approval from ORM for the auto appraiser is not required.
- The TPA will arrange for claimant car rentals during the period of time the claimant vehicle is not drivable and repairs are underway (allowing time for ordering parts). If the claimant vehicle is determined to be a total loss, rental is to be provided for up to three (3) additional calendar days after a legitimate settlement offer has been made. This is intended to allow the claimant adequate time to purchase a replacement vehicle. Additional rental may be allowed if it is a necessary to control the outcome of a larger bodily injury claim. These exceptions should be reviewed and approved by the TPA's transportation supervisor and documented in the claim file.

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- Total losses are to be moved to Copart as soon as the vehicle is determined to be a total loss. The current contact with Copart is with Brian Daniels. His phone number is 615-766-0159. His e-mail address is [Brian.Daniels@Copart.Com](mailto:Brian.Daniels@Copart.Com).
- When a State employee is driving a personal vehicle on State business, the State's liability coverage will be **excess** to the employee's personal auto policy.
  - The agency should provide a DA-2041
  - The TPA will obtain a copy of the employee's personal auto liability policy declarations page and the vehicle registration.
  - If the employee's personal auto limits appear to be inadequate, the TPA should investigate the claim accordingly and consider the excess exposure. If limits are inadequate, it is likely the State will be brought into the matter and proper investigation and documentation should be performed at the onset to prepare for an eventual claim and/or litigation.
    - ◆ When interviewing the employee (driver), the examiner should ask questions to ascertain what specifically the employee was doing at the time of the accident in order to help determine if the employee was actually within his/her scope of work; i.e. specific accident location, time of day, where the employee was coming from and where the employee was headed, where is the employee's office located, what are the employee's normal work schedule, does the employee usually report to the office prior to performing off site work. Remember although the agency may think the employee was in their course and scope, the examiner's investigation -if asking appropriate questions- may reveal that the employee had "stepped" outside of their job duties.
  - The examiner must obtain written confirmation from the state agency stating the employee had permission to use his/her personal vehicle.
  - If the personal auto liability limit appears to be adequate, the claim can be closed once the file is documented with the appropriate information.
- Third party vehicle damage claims for "glass only", such as debris flying off of a licensed state vehicle onto a passing or following vehicle, are to be submitted by the agencies on either a DA-2041 or a DA-2073 (Vehicle Glass Repair/Replacement Loss Notice) directly to the TPA at their designated claims reporting site.
  - If a third party's vehicle sustains "glass only" or other damage due to flying debris from landscaping activities while at an agency location, this is a general liability claim not a transportation.
  - If a third party's vehicle sustains "glass only" or other damage due to flying debris from roadway maintenance (direct road repairs, construction zone work, or mowing operations), this is a road hazard claim not a transportation claim or a general liability claim.
- Enterprise Rent-A-Car and Hertz have statewide contracts with the State of Louisiana to provide rental vehicles for state agency. The contracts require the rental companies to supply the insurance for physical damage to the rental vehicle and liability claims arising from the use of rental vehicles by State employees while conducting State business when a vehicle has been rented under the State Motor Pool in-state or out-of-state rental contract. Reference the rental information sheet for terms and conditions. In those instances, a DA-2041 is to be submitted for "Reporting Purposes Only".
- Per R.S. 9:2798.4 the claimant is precluded from recovery in certain instances when the claimant driver is impaired.

**USE OF INVESTIGATIVE SERVICE VENDORS**

All claims involving significant bodily injury and/or property damage or questionable liability should be considered for independent investigation assignment. **ORM should be consulted with and approval issued before assignment to a vendor**, e.g. site/scene investigations, surveillance, skip traces, etc. Rule of thumb, if the services will result in a charge to the claim, approval must be obtained.

The TPA should email the request to the ORM supervisor requesting, this includes the TPA's subsidiaries or "in-house" SIU if a cost will be incurred for the services.

The request should include the name of the firm to be used, the reason for the request and what is to be done, and the estimated budget for the activity(ies).

A copy of the vendor's report(s) should be sent to the ORM supervisor upon their receipt. The name of the actual company that is investigating the claim should be provided. Therefore, if the assignment was given to SIU and SIU assigned the claim to a third-party, the name of the third-party company should be provided.

Please note this process does not include the use of experts, such as accident reconstructionist, physicians, etc. in a litigated case. Please refer to the Expert section under the Litigation Management caption.

**SUBROGATION**

- The TPA must ensure the State's subrogation interest is protected on all claims.
- Filing of suit to interrupt prescription or filing of suit to recover the State's interest should be requested by the examiner at least ninety (90) days prior to prescription.
- All requests for the appointment of an AAG staff attorney to handle a subrogation matter will be submitted to ORM to the attention of Lisa Torres along with a Subrogation Summary. If approved, ORM will prepare the Attorney Appointment Form and submit it to the AG for assignment. AG will notify the TPA and ORM as to the name of the appointed attorney/law firm.

For transportation claims, authorization to waive less than 50% of our subrogation interest can be obtained from the designated ORM supervisor. **Authorization to waive more than 50%** of our interests will require an RSA and submission to ORM Claims Council. These requests shall be directed to Lisa Torres [Lisa.Torres@la.gov](mailto:Lisa.Torres@la.gov).

**LITIGATION MANAGEMENT**

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

- Upon notification of the assigned defense counsel, the examiner should provide counsel with the examiner's name and contact information.
- The examiner should contact counsel within seven (7) working days to discuss the case, develop an initial plan of action for defending the allegations contained in the petition, and establish if counsel needs the use of an IA or other investigative services to obtain information (e.g. gather documents from agency, find witnesses, photograph/diagram scenes, background/social media checks, surveillance, etc.).

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- The TPA will receive a Coverage Determination Notice from the AG’s office, often referred to as a 5108.1 review. This review relates to whether or not the entity or individual named is a “covered individual” according to LA RS 13:5108.1. Upon receipt of the 5108.1 review, the examiner should attach and properly label it into the claim file. It is recommended this notice is labeled as “5108.1 Review” to help prevent confusion as to the type of coverage determination, i.e. an ORM policy/coverage determination or a 13:5108.1 determination.
  - Although an individual may be a “covered individual” under LA RS 13:5108.1, that determination is not a determination related to coverage and/or indemnity under the Self-Insurance Fund’s insurance policy.
  - If a suit is amended naming a new individual defendant, a 5108.1 review should be received for the new defendant.
- **TEAM MEETINGS** – Defense and strategy meeting
  - A team meeting (strategy meeting) shall be held within 90 days of the case assignment, or as soon as practicable thereafter, but no later than 30 days before the six month case assessment is due.
    - ◆ The team meeting does not negate the examiner’s responsibility to contact the assigned attorney within 7 days (as noted above) or to discuss what needs to be done by both parties prior to the team meeting.
  - Attendees shall include the defense counsel, the TPA examiner and the DOJ section chief. The ORM supervisor and manager should receive an invite to the team meeting; their attendance is at their discretion. Invites should be sent to any other AG personnel as requested by an assigned AAG or as dictated by the AG when contract counsel is assigned.
  - The purpose of the team meeting will be to discuss a strategy for aggressively defending the case, including discovery to be conducted, available affirmative defenses, possible immunities, the need for and the retaining of experts, and the potential for dispositive motions.
  - The TPA examiner shall schedule and coordinate the meeting.
  - The TPA examiner will document the strategy (action plan) agreed upon and will send an email to each attendee confirming the action plan. Specific dates or date range for the accomplishment of activities should be set.
  - Unless otherwise determined by the DOJ section chief and ORM supervisor, the team meetings will be held via teleconference.
  - Additional team meetings shall be held as determined by the DOJ section chief or the ORM supervisor.
- The Team Meeting is an “initial” strategy meeting, the examiner must continue with the oversight, management, and follow up on the case until resolution.
- Examiners should make certain that answers were properly filed, written discovery (interrogatories, requests for production of documents, and requests for admissions) are propounded (sent) to plaintiff counsel very early in the life of a case. They should monitor this aspect of the defense and communicate directly with counsel to make certain it is done.
- Discovery propounded by defense counsel is to be promptly answered. If plaintiff does not respond promptly, the examiner should discuss the possibility of filing a motion to compel with defense counsel. Defense counsel is to provide a copy of the discovery responses to the examiner.

## LOUISIANA OFFICE OF RISK MANAGEMENT CLIENT INSTRUCTIONS FOR THE TRANSPORTATION UNIT

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- Generally, written discovery should be propounded and answered by the plaintiff prior to plaintiff being deposed. Receipt of this information beforehand will assist defense counsel in preparing for the deposition.
  - The timing of a plaintiff's deposition is important. Plaintiff should not be deposed too early, in order to allow for the gathering of information related to the incident and alleged injuries.
  - It is often desirable for the injuries to mature to a degree (time for plaintiff to receive a diagnosis, treatment and, hopefully, a prognosis) before deposing.
  - In most cases, a deposition should be taken from 8 to 12 months from filing suit, if not earlier (depending on how long after the incident suit was filed).
  - If plaintiff's deposition has not been scheduled within an appropriate timeframe, the examiner should discuss the need for and the scheduling of plaintiff's deposition with defense counsel. The examiner should dialogue with counsel to find out if there is a legitimate reason the deposition has not been conducted and what activity needs to occur so the deposition can take place.
  - If there is a disagreement or continued delay on the part of our defense counsel, the examiner should notify the TPA management team, as well as the ORM transportation management team.
  - The TPA examiner should not approve payment for the deposition until the deposition has been received and attached to the claim file.
- The examiner should ensure a copy of all pleadings, discovery, depositions, etc. are received and attached to the claim file. Each document should be separately attached and properly labeled.
  - Labeling examples: MSJ – Lack of Notice (State); MSJ – Liability (Pltf); Exception – Improper Venue (State); Depo – John Doe (DOTD employee); Depo – Sam Somebody (Plaintiff)
- The examiner should read, understand, and refer to the attorney's Case Handling Guidelines and Billing Procedures. This document may answer questions the examiner has regarding authority and/or procedures for specific actions the attorney wishes to perform, such as, attendance of out of state depositions; more than one attorney to attend trials, depositions, hearings; retaining experts. It will provide information regarding allowable billing practices and charges of contract counsel.
- During the life of the case, the examiner may have concerns that certain aspects of the case are not being addressed, such as filing of an MSJ, use of an IME, etc. These concerns should be discussed with defense counsel. Asking counsel, *rather than directing or instructing*, about these issues, may allow for better communication and results. If the examiner remains concerned about the direction defense counsel is taking or the lack of specific activities, he/she should notify their supervisor and the ORM supervisor to discuss. The ORM supervisor will escalate the issue, if needed.
- When defense counsel is faced with an adverse ruling or judgment and a decision on whether to appeal or to seek a writ, or to waive the taking of same is in order, a SF-6 form (DOJ/ORM Request for Writ or Appeal) must be submitted. This form shall be used for both supervisory writs and for writs of certiorari, whether it is interlocutory or involves a monetary award.
  - Contract counsel shall submit the completed form to the appropriate DOJ Section Chief.
    - ◆ The section chief shall electronically transmit the form with their written recommendations to the LP/DOJ Director and to the ORM Assistant Director for Litigation Management.
  - LP/DOJ staff attorney shall submit the SF-6 to either the Section Chief or Regional Chief, whichever is applicable.

## LOUISIANA OFFICE OF RISK MANAGEMENT CLIENT INSTRUCTIONS FOR THE TRANSPORTATION UNIT

- ◆ The Regional Chief transmits the SF-6 with their written recommendations to the appropriate Section Chief.
- ◆ The Section Chief will forward the SF-6 with their written recommendations to the LP/DOJ Director and to the ORM Assistant Director for Litigation Management.
- Once the LP/DOJ Director and the ORM Assistant Director for Litigation Management have made a determination, the TPA examiner will receive a copy of the completed SF-6.

### RESERVATIONS OF RIGHTS LETTERS

#### RESERVATION OF RIGHTS LETTER

When it has been determined that there are alleged causes of action, or requested damages, in a lawsuit that are not covered under the policy, it is the responsibility of the TPA to send a reservation of rights letter to the following persons advising them as to the reason for non-coverage:

- The “head” of the insured state entity, agency or department named as a defendant in the petition or complaint
- Also, any individual state employee named as a defendant in the petition or complaint
- A courtesy copy should be sent to the general counsel of the state entity, agency or department named as a defendant in the petition or complaint.
- Finally, a copy should be sent to the assigned defense counsel.

The reservation of rights letter should be sent out no more than sixty (60) days from service of the original/amended-supplemental petition or complaint on the state agency, entity, or department and no more than sixty (60) days from receipt of the 13:5108.1 coverage letter for an individual defendant. **The reservation of rights letter must be sent by certified mail, return receipt requested. All ROR letters and documentation (certified receipt) must be attached in the Claims Management System file.** The TPA Supervisor will establish a diary system to confirm that the signed return receipt is returned and attached to the Claims Management System file.

In the event one hundred and eighty (180) days or more have elapsed since the service of the pleading on the state agency, entity, or department or the receipt of the 13:5108.1 coverage letter for an individual defendant, and a ROR letter is appropriate but has not yet been sent, the examiner shall submit a request for approval to send the late ROR letter. This request shall be sent via email along with a copy of the respective pleading(s) to the ORM Supervisor with a copy to the respective ORM Manager and State Risk Administrator – Claims. The email request must also contain the following information:

1. Is this letter for a state agency, entity, or department or a named individual?
2. What triggered the need for this recipient to receive an ROR letter? If triggered by a pleading, please state the date the pleading was served.
3. If this letter is for an individual please answer the following:
  - a. Was the individual served?
  - b. Was a 13:5108.1 determination letter received and in claim file? Please state the date the 5108.1 coverage letter was received.
  - c. Where is letter being mailed (i.e. home, agency where employed)?
4. What is the trial date, if any?
5. What are the upcoming case deadlines, if any?
6. What is the status of discovery?
7. Has a dispositive motion been filed in the case?

### SPECIAL HANDLING OF LITIGATED DPS&C – OFFICE OF STATE POLICE CLAIMS

## **LOUISIANA OFFICE OF RISK MANAGEMENT CLIENT INSTRUCTIONS FOR THE TRANSPORTATION UNIT**

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When an RSA involves the Office of State Police, the TPA will provide ORM with the RSA and their review in the usual manner. ORM will complete their review of the RSA and contact LSP to obtain their input. This function will be the responsibility of the assigned ORM supervisor or manager. ORM will provide Faye Morrison (LSP) with a copy of the RSA and a brief summary of the ORM's recommendations. The claim file should obtain a copy of the completed OLA assignment form. ORM will refer to this form to include the name of the OLA assigned monitoring attorney and OLA case number on the email. LSP/OLA should provide their input within three working days. If the input is not received within the designated timeframe, the RSA processing will not be delayed.

### **SPECIAL HANDLING DPS&C-LOUISIANA DEPARTMENT OF CORRECTIONS (DOC) CLAIMS**

This section refers only to claims made by an inmate against a DOC prison facility or Probation and Parole. These instructions do not relate to other DPS&C entities.

#### **DOC Prisoner Claims**

Non-litigated prisoner claims are received directly from the DPS&C – Corrections, referred to herein as DOC. Any non-litigated claim received directly from a prisoner shall be returned to DOC for processing.

- Any claim, litigated or non-litigated, made by a prisoner must proceed through the Administrative Remedy Procedure (ARP), per RS 15:1171.
- Basic ARP information:
  - Inmates must file a claim within ninety days of the incident, otherwise the claim is prescribed. Furthermore, the administrative remedy (the ARP process) must be exhausted before suit is filed.
  - The inmate files step one of the ARP at the local institution and a decision is rendered at that point.
  - If the claim is denied at the local level and the inmate wishes to pursue the matter further, the inmate must appeal the decision by going through step two of the ARP.
  - The appeal is reviewed by Headquarters. Headquarters can either uphold the initial denial or refer it to the TPA for review and recommendation.
  - If referred to the TPA, the examiner will review the ARP file and determine if the claim has or does not have merit, they will write to headquarters with their recommendation.
    - ◆ If TPA recommendations find the claim without merit, Headquarters will send the second denial. At this point, the inmate can file suit.
    - ◆ If the TPA determines the claim has merit, the examiner will discuss this directly with the appropriate DOC in-house legal personnel to value the claim.
- Upon receipt of a lawsuit, if there is not a copy of the ARP, the examiner shall check with Swaantje Hoffman at Corrections to determine if a file has been opened and if so, obtain a copy for the claim file.
  - Contact for Swaantje Hoffman – Ph: 225 342-6782 Email: [SHoffman@Corrections.State.La.Us](mailto:SHoffman@Corrections.State.La.Us)
  - If the TPA is made aware that another has taken Mr. Hoffman's place as the contact, the TPA should immediately advise the ORM supervisor.
- All settlements of prisoner claims, whether litigated or non-litigated, must be submitted to ORM with a Request for Settlement.

## **LOUISIANA OFFICE OF RISK MANAGEMENT CLIENT INSTRUCTIONS FOR THE TRANSPORTATION UNIT**

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- DOC would like to review only specific transportation RSAs. These RSAs include incidents where a shuttle bus hits a sally port and there are allegations of injuries due to non-restrained inmates or suits with Donna Grodner as the enrolled attorney. DOC has advised if counsel feels the claim is significant, counsel may solicit DOC's input.
  - When DOC is to be contacted, the TPA and defense counsel shall solicit input from the DOC representative prior to submitting the RSA to ORM. If DOC has not responded to the request within five working days, the TPA will submit the RSA or non-litigated settlement request to ORM, in the usual manner.
    - ◆ The submission should have the correspondence to DOC requesting their input and DOC reply attached to it, if received.
    - ◆ If DOC's response is received after the RSA was submitted to ORM, the examiner will forward that response email to ORM as soon as it is received.
- Once the RSA is received by ORM it will be processed in the usual manner.

### **LITIGATION DIARY**

Litigated claims must be maintained on a continuous diary to obtain reports from the defense counsel defining the status of the litigation and the plan for resolution of the litigation.

Specific diaries should be established for the following items:

- Initial Case Assessment (ICA) – 60 days from date of assignment acceptance by counsel
- Six Month Case Assessment (SMCA) – 180 days from date of counsel assignment
- Status Update Reports (SUR) – submitted as needed to report significant changes in the status of the case. TPA supervisor approval needed prior to an examiner requesting an updated status report.
- Trial SF3 RSA – 90 days before trial

### **MEDICAID**

- The TPA examiner or defense counsel (if case is in litigation) must obtain information as to whether or not the claimant is a Medicaid recipient.
- The TPA examiner must complete the online Medicaid request submission.
- The TPA examiner should provide defense counsel with the Medicaid information as it is received.
- Determination of the plaintiff's status as a Medicaid recipient and/or liens should be performed early on in the case. An RSA should not be received where the plaintiff's Medicaid status and/or liens is "unknown".

### **MEDICARE**

- TPA is responsible to verify Medicare Liens
- Medicare's interest must be protected as they are considered a Secondary Payor.
- Medical bills paid by Medicare must be considered for reimbursement in any settlement.
- When the claim is **first** received the examiner should request the claimant's date of birth and Social Security Number or HICN from the plaintiff attorney or pro se' plaintiff.



## **LOUISIANA OFFICE OF RISK MANAGEMENT CLIENT INSTRUCTIONS FOR THE TRANSPORTATION UNIT**

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- If the needed information is not voluntarily provided, the information should be obtained by counsel through discovery.
- An RSA should not be received where the plaintiff's Medicare status and/or lien status is unknown or not determined.

### **FUTURE MEDICAL CARE FUND (FMCF)**

- Settlements and judgments on bodily injury claims may include an award for future medical care. R.S. 39:1533.2 authorizes that the funds be paid directly to the medical provider as the expenses are incurred pursuant to R.S. 13:5106(B) (3) (c). Specific language should be included in all settlements and judgments that reference amount allocated for future medicals.
- Once the agreement is reached or there is a final judgment, the TPA examiner handling the claim will send a letter to the plaintiff attorney with instructions as to the handling of future medicals that are payable from the date of settlement forward.
- The TPA has copies of the standard letter regarding payment from the Future Medical Care Fund.
- TPA handles all future medical payments. A separate future medical care fund claim must be set up by TPA and assigned to TPA examiner for handling. Ensure the ORM claim number assigned is properly formatted to denote it is Future Medical Care Fund claim.
- The TPA should assign a specific examiner to handle all future medical payments. A copy of the settlement /judgment and information regarding the injuries involved should be sent to the designated person.
  - Only those medical payments that are necessitated due to the subject accident should be paid from the claim.

### **CASE/SCHEDULING NOTIFICATIONS – TRIAL AND MEDIATION ATTENDANCE**

The TPA examiner must obtain a copy of the scheduling order and attach it to the file. As soon as the trial or mediation date is set, the examiner must notify the ORM supervisor of the date.

TPA must maintain a calendar of all scheduled mediations and trials. A reminder notification must be made to the ORM supervisor thirty (30) days prior to all trials and mediations.

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

The email template shown below should be utilized when notifying ORM of the scheduled date. The email's subject line should be formatted in the following manner:

Claimant Name | Claim Number | Trial date notification

Or

Claimant Name | Claim Number | Mediation date notification

Email Template:

**Claimant:**

**Defense Counsel:**

**Plaintiff Counsel:**

**Trial Date and Time:**

**Jury or Bench Trial:**

**Length of Trial:**

**Venue:**

**Docket:**

**Judge:**

**Mediation Date and Time:**

**Location:**

**Mediator:**

**TPA File:**

**TPA Examiner:**

**STAFFINGS**

A staffing may be requested by defense counsel, ORM or the AG to discuss a plan of action on a case. The TPA examiner should attend the staffing and document the names of those who attended and the outcome of the staffing. The TPA should take notes which include the plan of action that states the subsequent steps in the defense of the case that were decided in the staffing. The notes must be attached to the claim file within 3 working days. The examiner is to follow up to ensure that defense is proceeding with plan of action.

**RSA PROCESS**

All assigned defense attorneys shall submit an RSA in accordance with the guidelines established by the Litigation Program of the Department of Justice and ORM, refer to the Attorney's Billing and Case Handling Guidelines. In the event of exigent circumstances, the RSA must be submitted to ORM in sufficient time for ORM to evaluate and take action on the request.

- RSA's prepared by an AAG
  - Must be submitted to the AAG's office chief (if applicable) and the section chief for their review, comments, and signature prior to submission to the TPA.
- RSA's prepared by contract counsel will be sent to the assigned examiner and to [LitigationRSA@ag.louisiana.gov](mailto:LitigationRSA@ag.louisiana.gov).

Upon receipt of an RSA the examiner will closely review the RSA to ensure that all important elements of the claim and the defense are thoroughly covered, all sections of the RSA are properly completed, and the current version of the RSA is being used by the defense attorney.

If the information in the RSA is incomplete, incorrect or lacking certain elements:

- The TPA examiner will communicate directly with the assigned defense counsel about the needed information.
- The examiner should follow up communication with defense counsel by way of an email confirming the communication and information needed. The returned RSA should be sent to defense counsel and [LitigationRSA@ag.louisiana.gov](mailto:LitigationRSA@ag.louisiana.gov) with the ORM supervisor and manager copied.
- Should a critical date be looming soon after the receipt of an RSA needing either correction or supplementation, the examiner is to forward the deficient RSA to ORM.
  - The email should indicate that further information has been requested but due to the approaching critical date the deficient RSA is forwarded to put ORM on alert and allow commencement of review in light of the critical date.

## LOUISIANA OFFICE OF RISK MANAGEMENT CLIENT INSTRUCTIONS FOR THE TRANSPORTATION UNIT

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If the received RSA is ready for processing then:

- After the TPA examiner has reviewed the RSA, the examiner must complete a Settlement Review Form with the examiner's and the team lead's recommendations.
  - The email from defense counsel with the RSA shall be forwarded (with the RSA and the Settlement Review Form attached) to the ORM supervisor with the ORM manager copied.
  - The submission to ORM should be within 10 working days of the TPA's receipt of an RSA.
    - However, if there is a critical date that will occur prior to the ORM submission date or very shortly thereafter, then the TPA examiner should immediately forward the RSA to ORM and began review of the RSA.
    - The email to ORM should indicate the examiner's review is underway and the Settlement Review Form will follow, but due to the approaching critical date the RSA was forwarded to allow commencement of review.
    - Although the usual manner of processing RSA's is "reviewed in the order they are received", there will be instances where the examiner should triage the RSAs. An RSA may need to be "moved to the front of the line" if a trial or tentative mediation date is looming and the authority requested will require a claims council meeting or additional approvals such as the Commissioner of Administration and/or the JLCB. As these additional approvals increase the processing time, the RSA must be evaluated and submitted as soon as possible.
  - After the ORM review process, the ORM's decision form, the RSA, and the TPA's Settlement Review form will be emailed by ORM to the AG at [LitigationRSA@ag.louisiana.gov](mailto:LitigationRSA@ag.louisiana.gov), for the AG's concurrence process.
    - If the ORM settlement authority was greater than \$250,000, approval from the Commissioner of Administration is required. ORM will seek the Commissioner's approval prior to the RSA being forwarded to the AG's office.
  - Once ORM sends the RSA to the AG's office, the appropriate authority level at the AG's office will review the RSA, provide comments, concurrence, and signature.
  - After completion of the AG's review and concurrence, the AG will email the TPA and ORM the completed RSA package.
  - REMINDER: Once settlement authority has been approved by ORM and the AG has concurred, the reserves should be set accordingly.
  - If the authority approved is less than \$500,000 then the examiner will notify contract counsel of the approved amount and action(s). The examiner should make the notifications as follows.
    - The TPA examiner should notify defense counsel of settlement authority when there is no mediation involved via email **using the following verbiage**.
      - ◆ Per the authority granted by ORM and concurred upon by the Attorney General's Office, you now have settlement authority in the amount of ...*(describe monetary authority granted, as well as any non-monetary authority granted: this would include any authority regarding individual plaintiff offers, Medicare and other liens, Medicaid reimbursement claims, future medical expenses payable through the Future Medical Care Fund, stipulations as to the existence of a duty and a breach thereof, waiver of a jury trial, participation in mediation, proceeding to trial, etc...)*
- Unless particular circumstances or your granted authority dictate otherwise, please extend an offer in a timely manner. You must advise and update your examiner of any offers or counter-

## LOUISIANA OFFICE OF RISK MANAGEMENT CLIENT INSTRUCTIONS FOR THE TRANSPORTATION UNIT

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offers extended, counter-offers received or reasons for withholding any offers, as negotiations progress but in any case, no later than 30 days from receipt of this email. It is vital that all offers, counter-offers and settlements are reported to the examiner as negotiations progress. This information is critical to the completion of ORM's bi-annual reports to the Legislature. Your cooperation is appreciated.

- The TPA examiner should notify defense counsel of settlement authority when mediation is involved via email using the **following verbiage**.

- ◆ Per the authority granted by ORM and concurred upon by the Attorney General's Office, you now have settlement authority in the amount of ...*(describe monetary authority granted, as well as any non-monetary authority granted: this would include any authority regarding individual plaintiff offers, Medicare and other liens, Medicaid reimbursement claims, future medical expenses payable through the Future Medical Care Fund, stipulations as to the existence of a duty and a breach thereof, waiver of a jury trial, participation in mediation, proceeding to trial, etc..)*

Please inform the examiner of the mediation date, time, and location as soon as the date is set. Your cooperation is appreciated.

- Settlements of \$500,000 or greater approved by ORM, the Commissioner of Administration, and the AG are not final until approval has been granted by the Joint Legislative Committee on the Budget (JLCB). The examiner will need to communicate with defense counsel the settlement authority and actions that have been approved thus far, but still require final approval from the JLCB. Defense counsel will need to attempt settlement with plaintiff contingent above that final approval.
- ORM will coordinate scheduling with the JLCB and will inform the TPA and defense counsel when the meeting with the JLCB is set.
- Attendance by TPA representative(s) at the subcommittee meeting is mandatory.
- If approved by the JLCB, ORM will forward the signed documentation to the examiner for upload to the claim file when it is received. Upon receiving the final approval, it will be the TPA's responsibility to notify counsel that the approval from the JLCB has been received.

### ORM CLAIMS COUNCIL

- The processing of some RSAs will require authorization from ORM Claims Council.
- An ORM Claims Council consist of at least three voting members.
- Settlement requests over \$200,000 require the approval of the ORM Claims Council. The examiner may present the case in person or by telephone.
- The following items require Claim Counsel approval with participation by Joe Roussel and written concurrence of the DOJ Senior Counsel to the Attorney General:
  - Bifurcation of trial wherein liability and damages will be tried separately (RSA)
  - Requests for stipulation to liability (RSA)
  - Requests to waive a jury trial (RSA)
  - Authority to proceed to trial without any monetary authority
  - Response to plaintiff's Offer of Judgment (RSA)

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- If the settlement amount requires approval from the Attorney General or other parties, ORM will coordinate that approval process and notify the TPA of the final settlement authority.

### **NEGOTIATION TRACKING**

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

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

### **ABANDONMENT**

- An action is abandoned if the parties fail to take any step in its prosecution or defense in the trial court for a period of three years.
- Refraining from actively defending a suit with the hope that plaintiff may not prosecute his claim for such an extended period is not a favored course of action, as it allows for the unnecessary accrual of interest, allows for the memory of a witness to fade (making his testimony less reliable), and creates the risk that physical evidence may be altered, destroyed, misplaced or become otherwise unusable. It is for these reasons that all cases must be aggressively defended.
- The claims examiner must actively monitor the file, stay in communication with defense counsel, and request status updates at the appropriate times. The examiner is responsible for ensuring that the defense of the case is progressing and maturing. This limits the opportunity for possible abandonment to be considered as an option.
- While electing to halt the active defense of a case (in the hope of potential abandonment) may be appropriate in some instances, such a strategy is the exception, not the norm. The following process should be utilized for all cases:
  - Cases assigned to in-house DOJ attorneys: The defense counsel within the Attorney General's Office, through the proper channels, must initiate a request for abandonment. If the Director of the Attorney General's Litigation Division determines that abandonment may be in the best interest of the litigation, the Director will forward the request to the Assistant Director for Litigation Management at ORM for consideration. Only the Director of the Litigation Division may make a recommendation to ORM for abandonment. Any final decision shall be communicated to the defense counsel, his supervisors, the examiner, and the examiner's supervisor. The examiner should forward this communication to the ORM supervisor and manager.
  - Cases assigned to contract attorneys: Contract counsel should direct their requests for abandonment to the Director of the Attorney General's Litigation Division and the Assistant Director for Litigation Management at the Office of Risk Management via email. Such requests will be reviewed by the Director of the Attorney General's Litigation Division and ORM's Assistant Director for Litigation Management. Any final decision shall be communicated to the defense counsel, the examiner, and the examiner's supervisor. The examiner should forward this communication to the ORM supervisor and manager.
- In the event the time delay lapses and abandonment occurs, defense counsel must file a motion to dismiss on the grounds of abandonment and obtain a formal judgment from the court. Defense counsel should also inform the examiner of the anticipated court costs.

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- No request for abandonment is required for automatic stays pursuant to the Prison Litigation Reform Act. However, at the end of the three-year period of abandonment, a motion to dismiss on the grounds of abandonment must be filed and a judgment of abandonment must be obtained, as previously noted.

### EXPERTS

When the assigned defense counsel needs an expert/consultant, they will complete the current *Request for Expert/Consulting Services Form* and submit it to the assigned TPA examiner for review and approval. The TPA examiner should be actively involved in determining the need for and selection of experts and consultants. The TPA examiner will ensure that defense counsel completes all questions and attaches the fee schedule, curriculum vitae and W-9 to the request. The form is available on the website. The TPA will notify defense counsel if the request is approved or rejected.

Invoices for services rendered by the expert/consultant will be paid by the examiner as an expense to the claim file. The examiner should ensure the expert/consultant billed according to the agreed upon fee schedule. If any invoice amount is reduced by the examiner, an explanation needs to be provided to the vendor and properly noted in the claim file.

## JUDGMENT AND SETTLEMENTS: LITIGATED AND NON-LITGATED 3<sup>rd</sup> PARTY CLAIMS

### NON LITIGATED SETTLEMENTS

A receipt and release **must be secured** on all bodily injury claims and third-party damage claims upon settlement regardless of the settlement amount.

- All non-litigated settlement requests over \$25,000 must be approved by ORM and the AG. A settlement evaluation and recommendation form must be completed and sent to ORM for approval. ORM will then forward to the AG for final approval.
- Settlement requests above \$250,000 require approval by ORM, the Commissioner of Administration, and the Attorney General.
- Settlement Requests of \$500,000 and above require the approval of ORM, the Commissioner of Administration, the Attorney General and the Joint Legislative Subcommittee on the Budget.

### LITIGATED SETTLEMENTS AND JUDGMENTS

- All litigated claims require the submission of an SF3 RSA to ORM.
- A settlement request of \$250,000 or below requires approval by ORM and the AG.
- A settlement request above \$250,000 requires approval by ORM, the Commissioner of Administration, and the AG.
- A settlement request of \$500,000 and above requires the approval of ORM, the Commissioner of Administration, the AG, and the Joint Legislative Subcommittee on the Budget.
- The TPA will be notified in writing of the decision on the requested authority once all approvals are issued by all applicable approval levels.

### SETTLEMENT/JUDGMENT NOTIFICATION

When a litigated claim has settled or a trial court judgment has been rendered, the examiner should immediately notify the ORM supervisor that the matter has settled and the amount of the settlement or trial award. This

## **LOUISIANA OFFICE OF RISK MANAGEMENT CLIENT INSTRUCTIONS FOR THE TRANSPORTATION UNIT**

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notification can be done via a mediation summary or trial summary. If the claim settled without meditation or trial, the examiner will need to provide this information via a specific email.

### **CLIENT FUNDING AUTHORIZATION / PAYMENT REQUEST**

All request shall be sent to the ORM supervisor with a copy to the ORM manager. The ORM supervisor will route the request to the appropriate ORM personnel, if it is above the supervisor's authority level.

#### **1<sup>ST</sup> PARTY DAMAGE/INDEMNITY PAYMENTS - REQUESTS OVER \$25,000**

- The claim file should be documented with the appropriate settlement approvals.
- The client funding authorization request should include:
  - Properly completed Client Fund Authorization form.
  - A copy of the repair invoice or the vehicle replacement documentation. If the documentation is too large to email, then document control number of the uploaded image should be referenced.

#### **CLIENT FUNDING FOR SETTLEMENT REQUESTS OVER \$25,000**

- The claim file should be documented with the appropriate settlement approvals.
- The client funding authorization request should include:
  - Properly completed Client Fund Authorization form.
  - A copy of the approved non-litigated settlement evaluation form (showing signatures), if applicable.
  - If non-litigated settlement, but plaintiff is represented, then an email from plaintiff counsel confirming appropriate payee(s) and amounts.
  - A copy of the final, approved RSA (showing signatures), if applicable
  - If litigated settlement, an email from defense attorney showing whom the payee(s) should be and the check amount for each check needed

#### **CLAIM EXPENSE PAYMENT OVER \$25,000**

- The claim file should be documented with the detailed invoice from the vendor and applicable support documentation.
  - A statement, showing an invoice number and amount, is not proper documentation for paying a vendor.
- The client funding authorization request should include:
  - Properly completed Client Fund Authorization form
  - Copy of vendor's invoice; if the invoice is a large file, the DCN number can be listed on the client authorization form in lieu of attaching the invoice.

### **BUDGET – LEGAL SERVICES**

A budget is required for the services of the assigned attorney. The budget procedures differ between legal services provided by outside counsel and legal services provided by the Office of the Attorney General.

**DOJ/Office of the Attorney General Staff**

The Office of Risk Management has an Interagency Agreement with DOJ/Office of the Attorney General for the legal services provided by the attorneys in the Litigation Division. It will not be necessary for TPA to request approval of defense budgets on cases being handled by AG staff attorneys. The AAG should submit an initial budget with the ICA. The budget will provide the estimated hours required to perform the task as broken down by category on the budget form. The examiner may and should request an updated budget from the AAG, if the initial budget will be surpassed. The examiner should review the billing for services rendered for any excessive charges and ensure that they have received adequate documentation for their files.

**Outside Counsel**

Contract counsel is appointed by the AG and concurred upon by ORM. Outside counsel will be required to read the *Appointment for Professional Legal Services* and sign the *Counsel's Acknowledgment and Acceptance of Appointment* (CAAA). Contract counsel must utilize Acuity (also referred to as TrialNet), which is a litigation management service. Contract counsel's invoicing, budget information, etc. is performed utilizing this service.

The **TPA examiner will set an initial budget** based on the current information, type of case, etc. in order to allow for initial payments via Acuity until counsel provides his/her initial budget. As per the Attorney's Case Handling Guidelines and Bill Procedures, counsel is to prepare a budget within 60 days of the assignment. Budgets and invoicing is made through Acuity-TrialNet.

Through the course of the case, should the budget near exhaustion, then counsel should provide an updated budget. Counsel will submit an email or letter to the TPA examiner outlining the **future tasks**, which require the need for a budget increase. The email should be reviewed by the examiner and their supervisor for agreement. If there are concerns, they should address this with counsel. The TPA has budget approval authority up to \$75,000.

When the budget request exceeds \$75,000 but is less than \$200,000, the TPA will forward a budget increase request email to the ORM supervisor for approval. If in order, ORM will provide an approval email. If not in order, ORM will return for corrections or additional information. The format for the email request is shown below. The email request should have:

- A copy of the current case assessment, which must have been prepared within six months of the request or an RSA that has been prepared within six months of the request.
- The attorney's explanation for the budget increase attached.
- Budget amounts should be rounded off, e.g. \$135,000, \$98,500.
- The Acuity budget in Excel format with the spreadsheet columns correctly totaled.
  - The spreadsheet should not have negative numbers, if it does this should be corrected before submitting to ORM.
  - The Acuity budget should match the amount being requested.

If the budget request is for \$200,000 or greater, Counsel and examiner must follow the same steps as listed above with two exceptions. The email request template does not need to be used, instead a Budget Memorandum is required. Both the email template and the Budget Memorandum are shown below. If possible, the memo should not exceed two pages. The TPA should ensure the Memorandum is clear and concise. It should be reviewed for spelling and grammar errors before submitting to ORM. The formatting (font, style, justification, etc.) **must** be as



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shown below. The Memorandum must be in Microsoft Word document and should be placed on the TPA's letterhead (lined up and properly formatted). The TPA will forward the budget increase request to the ORM supervisor. The request must include the Memorandum and the attachment items listed above. The ORM supervisor will review. If in order, the ORM supervisor will route the request to the appropriate personnel within ORM to obtain the required signatory approvals. Once the process is complete, the TPA will be notified and approved copies provided for attachment to the file. If not in order, ORM will return for correction and resubmission.

Email template for budget request less than \$200,000:

**Request for Budget Increase**

**Firm Name:**

**Current Budget Amount:**

**Total Amount Paid to Date:**

**Amount of Pending Payments:**

**Requested Budget Amount:**

**Reason for Increase Request:**

*The opening section should provide a brief description of the loss and what legal action has been accomplished. The next section should explain the needs for a budget increase, including the additional action required and note critical dates (hearing, trial, mediation, etc.).*

Budget Memorandum for budget request of \$200,000 or greater:

**Microsoft Word formatting will be as follows:**

- Veranda 12-point font (font size may be reduced to 11 in order to fit request within two pages)
- Modified Block Style
- Justified paragraphs
- The title "**MEMORANDUM**" must be in uppercase, bold, underscored and centered.

A blank form of the Budget Memorandum with instructions follows on the next page.

TO: Melissa Harris  
State Risk Director

FROM: XXXXXXXXXXXX  
Claims Examiner

DATE: XX/XX/XXXX

RE: **Request for Budget Increase**  
Claimant:  
ORM Claim Number:  
TPA Claim Number:  
Firm Name:

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Current Budget Amount:  
Requested Budget Amount:

The first paragraph should be a brief description of the loss and what legal action has been accomplished.

Second paragraph should include additional action required as well as note critical dates (hearings, trial date, etc.).

The final paragraph should include the total amount paid to the attorney, the total amount of outstanding invoices, and a statement recommending that the budget be increased from \$XXX.XX to \$XXX.XX.

APPROVED BY:

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Melissa Harris  
State Risk Director

Date

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Joseph M. Roussel  
Assistant Director for Litigation Management

Date

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Ann D. Wax  
State Risk Administrator – Claims

Date

**PERFORMANCE EVALUATIONS – DEFENSE ATTORNEYS**

The handling examiner will complete interim and final performance evaluations of the defense counsel on all litigated cases. If the evaluation is for an outside attorney, the Firm Name and the Assigned Attorney fields should reflect the name of the law firm and name of assigned defense attorney. If the evaluation is for an AG staff attorney, the Firm Name should be listed as DOJ/AG Litigation Program with the name of the AAG in the Assigned Attorney field.

**Interim Performance Evaluation – Legal (IPEL) form**

The IPEL form is completed once a year on ongoing cases. On a monthly basis, each Sedgwick examiner will be provided with a list of all cases that requires the completion of an Initial Performance Evaluation – Legal form. This listing will note the cases that were assigned one year ago. The second section of questions, which relate to work tasks, requires that comments be made if the answer to a question is “NO”. The TPA examiner will be responsible for contacting the assigned attorney in order to obtain written responses to questions answered with “NO”. Forms must be signed by the handling examiner and their supervisor. This form should be submitted to Ann Wax at [ann.wax@la.gov](mailto:ann.wax@la.gov).

**Performance Evaluation – Legal (PEL) form**

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The PEL form must be completed upon the conclusion of the case or in the event the case is reassigned to different counsel. The Total Defense Costs Paid field represents the attorney and legal expenses paid, not just the amount we paid the attorney for his professional services. The evaluation must be signed by the handling examiner and their supervisor. This form should be emailed to Ann Wax at [ann.wax@la.gov](mailto:ann.wax@la.gov).

### AVIATION CLAIMS

The following applies to aviation claims and includes specific ORM requirements and expectations.

- Aviation claims are reported by the agency via the Aircraft Incident/Accident Statement form located on the ORM website.
- Upon receipt of claim, the TPA should immediately open a claim and contact ORM Underwriting to verify the involved aircraft is scheduled, the policy limit, and the applicable deductible.
  - The current ORM Underwriter for aviation claims is Christine Ammons. Her contact info is [christine.ammons@la.gov](mailto:christine.ammons@la.gov) and 225-342-8460.
  - Reminder: Deductibles vary per aircraft and per coverage under the aviation policy.
  - Starting with FY17/18 the deductibles vary per aircraft and per coverage. Additionally, the deductible may be the responsibility of the agency or it may be ORM's responsibility.
- TPA should promptly report the claim to ORM's broker, Arthur J Gallagher (AJG) via email to [SEClaims@ajg.com](mailto:SEClaims@ajg.com). Phone numbers for Arthur J Gallagher are: 225-906-0128 or 855-497-0578 (office) and 877-892-2979 (fax).
- AJG will report the claim to the commercial carrier. The carrier will assign an adjuster and fully investigate the claim. Cost for the adjuster is the responsibility of the commercial carrier. The TPA should receive claim updates and outcomes from carrier.
- Once the carrier establishes the loss is insurable and the claim amount is determined, the claim payment should be issued. When the payment from the commercial carrier is received it should be "credited" to the claim file awaiting disbursement.
- Issuance of payment from the TPA for the aircraft repairs/replacement, may be made once the repair/replacement has been completed. Payment may be issued directly to the vendor or the agency may be reimbursed. Proper support documentation and/or proof of payment for the repairs must be received prior to payments being issued.

**WET MARINE CLAIMS**

**WET MARINE POLICY INFORMATION**

ORM's Wet Marine claims are covered via a commercial insurance policy. The current Wet Marine insurer is through Lloyds of London. Below is a brief summary of policy limits and deductibles. The TPA examiner should always refer to the actual policy for specific details.

The TPA should make immediate contact with ORM's Underwriting Unit to confirm the involved vessel is scheduled, the limit of insurance, and the applicable deductible.

- The current ORM Underwriting contact is Allison Schailer. Her contact info is [allison.schailer@la.gov](mailto:allison.schailer@la.gov) and 225-219-0064

**HULL** – ORM's deductible for non-catastrophic losses is per single occurrence and the deductible varies based on the schedule of vessels.

ORM's deductible for a catastrophe is \$250,000 per occurrence (not per vessel); or the deductible drops to \$200,000 if the occurrence does not involve any ferries.

Agency Deductible: \$1,000

**P&I (Protection & Indemnity)** –

ORM's deductible is \$750,000 per occurrence

Masters and Members of a Crew is \$1,000,000 per occurrence

Agency Deductible: \$0

**MARINE CLAIMS REPORTING TO BROKER OF RECORD AND COMMERCIAL INSURER**

Sedgwick will report claims as outlined below to Arthur J. Gallagher Marine Claims Department in Metairie (see below), who will report to the appropriate carriers. Please copy all contacts shown below when reporting a claim.

Sedgwick and the excess carriers have agreed to utilize VeriClaim Marine Office in New Orleans for both CAT and non-CAT hull and P&I claims.

- The examiner should seek approval from the ORM supervisor prior to engaging the services of VeriClaim, in the same manner as utilizing any IA or SIU services.

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ORM Underwriting Unit will send quarterly reports to Gallagher showing all open hull, P&I, and crew claims to all listed contacts. It is very important that the examiner ensures the proper line and coverage codes were used when setting up the wet marine claim.

The following types of claims should be reported to Arthur J. Gallagher Marine Claims Department in Metairie:

- 1) **All** hull claims;
- 2) P&I (including crew) claims, when any of the following apply:
  - a. A reserve is initially set at or is increased to 50% of the current Deductible (Deductible \$750,000);
  - b. Demand(s) where the total of such is greater than 50% of the retained limit;
  - c. Death;
  - d. Paralysis, paraplegia, quadriplegia;
  - e. Blindness, loss of eye(s) or limb(s);
  - f. Spinal cord or brain injury, massive internal injuries or multiple fractures;
  - g. Sensory organ or nerve injury, or neurological deficit;
  - h. Serious burns;
  - i. Substantial disability or disfigurement; or
  - j. Loss of work time of six months or more;
  - k. Any mold related losses;
  - l. Any pollution incident;
  - m. Denials of coverage;
  - n. Reservation of rights;
- 3) All named windstorms or other declared disasters claims.

### **AJG Marine Claims Department Contacts:**

**Rob Winn** (Area Vice President – Marine Claims)

[Rob\\_Winn@ajg.com](mailto:Rob_Winn@ajg.com)

504-872-3559 (Direct)

985-265-3759 (Cell)

504-888-1299 (Fax)

**Charlie Dirks**

[Charlie\\_Dirks@ajg.com](mailto:Charlie_Dirks@ajg.com)

504-378-4668 (Direct)

504-888-1299 (Fax)

225-936-1003 (Cell)

**Patricia Waidhas** (Claims Service Specialist Senior – Marine Claims)

[Patricia\\_Waidhas@ajg.com](mailto:Patricia_Waidhas@ajg.com)

504-378-4619 (Direct)

504-888-1299 (Fax)

### **Pollution**

All vessel pollution incidents should be reported immediately and directly to the U.S. Coast Guard, Safe Harbor Pollution and Gallagher. Safe Harbor will provide the adjuster and Sedgwick will monitor the claim only.

24 Toll Free Hotline: 877-397-9252

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Sean Quinn, Vice President  
Safe Harbor Pollution  
[squinn@safeharborpollution.com](mailto:squinn@safeharborpollution.com)  
516-417-6827

Excess Underwriters have the right to take over control of any claim that is expected to exceed \$750,000 in Protection and Indemnity coverage.

### ADDITIONAL INFORMATION / RESOURCES

#### **RESOURCES:**

**PPM List** – <http://www.doa.la.gov/Pages/osr/ppm/ppm.aspx>

After clicking on the link you will arrive at a DOA web page with a Policy and Procedure Memoranda (PPM) listing. The listings are hyperlinks which will allow you to view the specific PPM.

**ORM Insurance Information Notices (IIN)** - <http://www.doa.la.gov/Pages/orm/Insurance-Information-Notice.aspx>

Insurance Information Notices are emailed to agencies and posted on the ORM website. The notices provide updates and clarifications. IINs can be viewed at the link provided.

**Transportation reporting forms** - <http://www.laorm.com/reporting.html> and <http://www.doa.la.gov/Pages/orm/Transportation-Claim-Reporting.aspx>

Various reporting forms are available at both these websites, e.g. State Vehicle Damage Report Form (DA2041), Wet marine Liability Passenger Injury Form, Vehicle Glass Form (DA2073), etc.

**Louisiana State Legislature** - <http://www.legis.la.gov/legis/LawSearch.aspx>

Louisiana statutes can be found at this site. Statutes can be looked up by specific title and section or key word searches can be performed.

**Louisiana State Bar Association (LSBA)** - <https://www.lsba.org/Public/MembershipDirectory.aspx>

LSBA membership directory provides current contact information for members of the LSBA.

**NOAA | SPC Storm Reports** - <https://www.spc.noaa.gov/climo/reports/today.html>

This site provides preliminary storm data for tornado, hail, and high winds.

**The Old Farmer's Almanac** - <https://www.almanac.com/weather>

Another source to look up weather data. Middle of this web page has a weather history search using data from NCDC.

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**US Naval Observatory (USNO) | Astronomical Applications Department | Complete Sun and Moon Data for One Day** - [http://aa.usno.navy.mil/data/docs/RS\\_OneDay.php](http://aa.usno.navy.mil/data/docs/RS_OneDay.php)

Provides rise, set, and transit times for the sun and moon; civil twilight beginning and end times, etc.