

## Update Litigation Checklist 2021

Assignment Date:

### Within 7 Days of assignment: \_\_\_\_\_

1. Letter to Insured Driver
2. Letter to Plaintiff's Attorney requesting extension
3. Letter to Insured Representative (i.e. – trucking company)
4. Letter to Claim Professional acknowledging receipt of file
5. Get CAR and Budget form
6. Review for specific instruction from Claims Professional
7. Request policy of Insurance
8. Check for Affirmative defenses and Exceptions

### Within 15 Days of assignment: \_\_\_\_\_

1. Confirm extension granted by adverse party
2. Review specific instructions by client
3. Check status of receipt of investigative materials
4. Confirm who we represent
5. Litigation Holds/Preservation Letters

### Within 30 Days of assignment: \_\_\_\_\_

- A. - Review Investigative Materials
  1. Accident Report
  2. Photographs / Videos
  3. Statements
  4. Medicals / Settlement offers/demands
  5. Property Damage Appraisals
  6. Driver Qualification File
  7. Request health insurance records
  8. Check service
  9. Color photo of front & back of CDL/Drivers license & SSN
  10. Check for ISD
- B. Review Petition, Answer, Removal, Jury Request
  1. All Defendants served?
  2. Removal to Federal Court (complete diversity of all parties?)
    - Jurisdiction amount sufficient (\$75,000.00)
    - Plaintiff stipulated damage less than \$50,000.00, then no removal
    - Plaintiff submits demand in excess of \$50,000.00
    - Requests for admissions of damages
    - Prepare corporate disclosure (*for LLC, residency of ALL members disclosed*)
  3. Removal to federal court because of federal question preemption?
    - Carmack - or -
    - FAAAAA?
  4. Jury Bond?
    - Plaintiff stipulates that the cause of action's value exceeds \$10,000 but is less than \$50,000, a party must post a **cash bond of \$5,000 within 60 days of filing the request for jury trial - failure to do so is a waiver of jury demand**
    - No cash bond within 60 days is required if the claim is valued in excess of \$50,000, but the standard scheduling order for bond setting 60 days before trial
    - Transfer to district court provision from court of limited jurisdiction:
      - o within the delay allowed for answer in a trial court of limited jurisdiction – or –
      - o within ten days after the answer has been filed a party may file a motion to transfer to district court.

- **Failure to timely file such motion constitutes a waiver of jury trial.**
- 5. Raise Comparative Fault?
  - Failure to wear seatbelt has been added as of 2021
  - Consider all non-party entities/persons that could be at fault
- 6. Proof Mandatory Liability Insurance?
- 7. Affirmative defenses?
 

Identify affirmative defenses:

  - a. \_\_\_\_\_
  - b. \_\_\_\_\_
  - c. \_\_\_\_\_
  - d. \_\_\_\_\_
- 8. Exceptions?
  - Prescription
  - No C/A: \_\_\_\_\_
  - No R/A: \_\_\_\_\_
  - Proper Venue: \_\_\_\_\_
  - Failure to name indispensable parties:
    - a. \_\_\_\_\_
    - b. \_\_\_\_\_
    - c. \_\_\_\_\_
  - Other? \_\_\_\_\_
- 9. Draft Discovery specific to the case
- C. Review Discovery from Adverse Party
  1. Draft questions with blank spaces for answers (Be sure that each defendant is distinguished in responding to questions)
  2. Send questions to client for assistance
    - If assistance is needed & check to see if Client has a policy of answering discovery themselves
- D. Evaluate for need for Experts (Identify):
  1. IME
  2. Biomedical
  3. Accident Reconstructor
  4. Vocalized?
  5. Life Care Planning
- E. Draft written discovery to other parties
- F. Protective Order Needed?

**Within 45 days of assignment:** \_\_\_\_\_

- Check with client regarding responses to discovery from adverse party
- Draft initial CAR/Budget (at same time of answer)
- Interview insured driver (at same time of answer)
- Load documents online with searchable database

**Within 60 days of assignment:** \_\_\_\_\_

1. Check receipt of responses from adverse attorney to discovery submitted
  - Draft letter requesting responses if not received
2. Issue requests or subpoenas for:
  - Medical records
  - Employment records
  - Academic records (if applicable)
  - Health Insurance Records
3. Review plaintiff's discovery responses (if received)

4. Set up depositions of:
  - Plaintiffs
  - Key witnesses

**Within 90 days of assignment:** \_\_\_\_\_

1. Check status of receipt of medical records & health insurance records
2. Review CAR to see if there are specific things that need to be done
3. Determine if summary judgment applicable
4. Other depositions to set up:
  - \_\_\_\_\_
  - \_\_\_\_\_
  - \_\_\_\_\_
5. All medicals reviewed?
  - Conduct quantum analysis
6. Experts needed:
  - \_\_\_\_\_
  - \_\_\_\_\_
  - \_\_\_\_\_
7. Motion to Compel?

**Within 120 days of assignment:** \_\_\_\_\_

1. Meds summarized?
2. Depositions summarized?
3. Quantum evaluation summarized?
4. Update CAR/Budget
5. Medical doctors deposed?
6. Request scheduling conference to set trials
7. Reports from experts received?

**Within 150 days of assignment:** \_\_\_\_\_

- Trial date should be scheduled: \_\_\_\_\_
- Note Special Changes from 2020 Legislative Session re: jury trials:
  - If plaintiff stipulates **60 days or more** prior to trial that the claim is less than \$10,000 – the defendant is not entitled to jury trial
  - If plaintiff stipulates **within 60 days** of trial the defendant retains a right to a jury trial if the defendant has complied with the initial procedural requirements.
  - If plaintiff stipulates within 60 days of trial their claim is **less than \$10,000 as a result of a compromise or dismissal of one or more claims or parties**, a remaining defendant is not entitled to a jury trial.
- Follow scheduling order deadlines:
  - 1.
  - 2.
  - 3.
  - 4.
  - 5.
  - 6.
  - 7.
  - 8.
  - 9.
  - 10.

**Trial Preparation Checklist (see all orders) & add:**

- Mediation scheduled?
- Subpoenas to be issued.
- Witnesses to be prepared.
- Trial depositions scheduled
- Exhibits marked and exchanged
- Jury venire/Jury selection analysis
- Opening Statement