

# INTERNAL AUDIT

Claims Legal Services  
Transfer Advisory

May 25, 2021





## Advisory Memorandum

### Background

Business organizations rely on the advice of attorneys to handle legal, governance and operational issues relating to their industry. Like many organizations, Citizens' structure includes a Legal Department organized through several units, which handle administrative, employment, corporate, and claims / underwriting related matters, among others.

The unit assigned to provide support in connection with all claims and underwriting affairs, is Claims Legal Services. The Claims Legal Services unit reports to the General Counsel & Chief Legal Officer and is comprised of two sub-units: Attorney Claims Legal Services and Legal Bill Review Compliance.

With regards to the Attorney Claims Legal Services sub-unit, the following are the current positions:

- 1 Director & Assistant General Counsel
- 2 Assistant Directors
- 1 Manager
- 12 Senior Counsel
- 1 Administrative Assistant

Claims Legal Services operates in an advisory, collaborative role for litigated and non-litigated claims, as well as for other matters, providing support to several Citizens' departments, including Claims, Claims Litigation and Underwriting through several tasks and support activities.

### Objectives and Scope

Internal Audit has been asked to consider implications associated with the potential transfer of the Claims Legal Services function, currently attached to the Claims Legal unit of the Legal Department, to the Claims Department and provide advisory guidance to management.

### Analysis

Claims Legal Services performs an inter-departmental targeted advisory function for several Citizens' departments that include: coverage opinions; legal advice; Civil Remedies Notices (CRN) response reviews; Managed Repair Program support; Appraisal support; product development support; legislative drafting; policy voidance; document and witness production; and garnishments, which are performed by the Senior Counsel position. The current position profile for Senior Counsel (Appendix A) defines the roles and responsibilities of the position which include:

- Providing legal support, advice, guidance and analysis to the Legal Bill Review Team as well as other business units such as Claims and Claims Litigation, Underwriting, Customer Services, SIU, and Corporate Communications as needed
- Conducting trial preparation exercises
- Drafting form letters, pleadings, motions, and discovery

In 2020, Ernst & Young (EY) was engaged by Citizens to perform an operational assessment of the litigated claims management process *vis a vis* industry leading practices. EY's reports were



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issued December 15, 2020 and recommended **defining the roles and responsibilities associated with senior counsel to promote consistency in tasks as well as to assist with the promotion of suit avoidance measures, including handling lower-severity litigated claims**, holding that this would allow for greater efficiencies, as well as help manage legal spend.

In response to EY's recommendation, Claims Management holds that if Claims Legal was to adjust claims, attorney-client privilege would be lost<sup>1</sup>. There is no additional information provided to support this statement, which could be correct in instances where attorneys act as claims adjuster rather than providing legal advice. However, Internal Audit has found no instance in EY's reports where the **adjusting** of claims by the Claims Legal Unit is being recommended and is not aware of instances where the Senior Counsel position acts as a claims adjuster.

Notwithstanding the above and at a high-level, Attorney-Client Privilege is a legal doctrine that, subject to certain exceptions, protects written and oral communications between the attorney and the client, dissipating concerns of having information revealed to third parties. The privilege does not apply to every communication and the conduct of the parties to the relationship, even inadvertently, can waive the privilege. The attorney-client privilege only attaches when an attorney performs acts for an insurer in his/her professional capacity and in anticipation of litigation. *Milinz v. State Farm Ins. Co.*, 247 F.R.D. 691, 697 (S.D. Fla. 2007). An attorney's involvement pre-litigation may not qualify as "in anticipation of litigation".

It is important to mention that Florida Attorneys are governed by the rules and regulations set forth by The Florida Bar, which include Rules of Professional Conduct. Attorneys have discretion to exercise professional independent judgment and are bound by these rules even when acting at the direction of another person. If a conflict interferes with their professional judgment, the rules provide guidance to resolve it.

### Options for Consideration

With regards to the Claims Legal Services transfer initiative, Citizens has two options:

- Maintain the function under the Claims Legal Unit of the Legal Department
- Transfer the function to the Claims Department

With regards to EY's recommendation of defining the roles and responsibilities of the Senior Counsel position, Internal Audit believes the current position profile for Senior Counsel is clear as to defining these duties. If additional tasks or responsibilities are to be considered, Claims Legal and Human Resources would have work in developing a redefinition/re-engineering of the position profile.

The functions performed by the Claims Legal Services sub-unit are core to an organization's Legal Department. Internal Audit is not aware of a Florida domestic carrier with a legal advisory function under the Claims department. Although counsel is bound by rules of professional responsibility set forth by The Florida Bar, the transfer of Claims Legal Services to Claims may create the appearances of undue influence and lack of independence of counsel. To the point that these

<sup>1</sup> [E&Y Final Report Update - March 3, 2021](#) – Page 11



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concerns may exist, maintaining the unit under the Legal Department and not under Claims' purview, will help alleviate appearances of undue influence.

Furthermore, the transfer of the unit may entail additional staffing considerations if only the Claims advisory function was to be split from the Claims Legal Services sub-unit, as the unit still serves other Citizens departments.

We would like to thank management and staff for their cooperation and professional courtesy throughout the course of this advisory.

### References

- E&Y Final Report Update – Board of Governors Meeting – March 3, 2021
- Ernst & Young (December 15, 2020) Claims Litigation Assessment
- Ernst & Young (December 15, 2020) Claims Litigation Assessment – Underlying Findings
- Thomas D. Sawaya, The Work-Product Privilege in a Nutshell, 67 Florida Bar Journal 7 (1993) (<https://www.floridabar.org/the-florida-bar-journal/the-work-product-privilege-in-a-nutshell/>)
- Ginsburg, Steven D. (2017, March 16) How to Lose Attorney-Client Privilege (<https://www.americanbar.org/groups/litigation/committees/business-torts-unfair-competition/practice/2017/how-to-lose-attorney-client-privilege/>)
- Collins, Lewis F. (2015) Bad Faith: When Attorneys Act in a Claims Role (<https://www.theclm.org/File/Download?type=18&fileName=934.pdf&userFileName=When%20Attorneys%20Act%20in%20a%20Claims%20Role.pdf>)
- Rules Regulating The Florida Bar ([https://www-media.floridabar.org/uploads/2021/04/2021\\_10-APR-RRTFB-4-15-2021.pdf](https://www-media.floridabar.org/uploads/2021/04/2021_10-APR-RRTFB-4-15-2021.pdf))



## Distribution

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Addressee(s)

Barry Gilway, President/CEO/Executive Director  
Belinda Miller, Interim Chief Legal Officer & General Counsel  
Jay Adams, Chief, Claims

*Completed by Juan Carlos Rivera, Audit Manager  
Under the Direction of Joe Martins, Chief of Internal Audit*



## Appendix A – Senior Counsel Job Description



### Job Description – (Non-Management)

To be completed by Manager:		To be completed by HR Compensation	
<b>Job Title:</b>	Senior Counsel – Claims Legal	<b>Job Code:</b>	611E
<b>Function:</b>	Legal Services	<b>FLSA:</b>	Exempt
<b>Location:</b>	Jacksonville	<b>Pay Grade:</b>	36-EX
		<b>EEO:</b>	2

*Please include organizational chart*

#### SECTION I – JOB SUMMARY

*In two or three sentences briefly, but specifically describe the primary function of the job. Describe what the job is responsible to accomplish, and the level of autonomy associated with the job. This position performs complex, professional, legal work with substantial latitude, and primarily provides legal services to Claims on first and third-party claims and litigation issues arising under property insurance policies. Provides support to other Business Units within the organization as needed.*

#### SECTION 2 – JOB DUTIES *(are also essential functions of the job, meaning an individual must be able to perform all of the job duties/essential functions to be successful in the job.)*

*List the top six or seven primary duties and responsibilities of the job, indicating the most important first, and the approximate percentage of time spent on each. **Minimum % of time for the purposes of this description is 10%.** Duties and responsibilities that make up less than 10% are considered "other related duties as assigned", and may change at any time. % of time must equal 100%*

#### Job Duties | Essential Functions % of time

Models ethical behavior and executives job responsibilities in accordance with Citizens core values, ethics, and information protection policies.		
1)	<b>Legal Support to Organizations / Delivery of Legal Advice</b> <ul style="list-style-type: none"> <li>Provide legal analysis, advice and support to Claims (Front-End Claims and Claims Litigation) on claim-handling strategies.</li> <li>Provide advice and support to Claims on good faith claims-handling.</li> <li>Provide legal advice and support to Claims Litigation personnel on litigation and trial strategies.</li> <li>Provide legal analysis and coverage opinions to Claims personnel.</li> <li>Provide legal analysis and advice to Claims regarding developments in statutory and case law.</li> <li>Provide advice and guidance to Claims Litigation personnel and Outside Counsel on appeals.</li> <li>Provide guidance and direction to Outside Counsel in collaboration with Claims Litigation personnel.</li> </ul>	40%
2)	<b>Trial / Litigation Preparation</b> <ul style="list-style-type: none"> <li>Conduct and facilitate Trial Preparation Exercises.</li> <li>Provide guidance and support to Claims and Outside Counsel on trial strategy.</li> <li>Monitor and manage trials as needed.</li> </ul>	20%
3)	<b>Legal Bill Review Team Support</b> <ul style="list-style-type: none"> <li>Provide advice and support to Legal Bill Review Team as needed.</li> </ul>	10%





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4)	<b>Training</b> <ul style="list-style-type: none"><li>• Prepare and present internal training to Claims on legal issues pertaining to applicable insurance laws and litigation.</li><li>• Prepare and present external training to Outside Counsel on legal issues and strategies.</li></ul>	10%
5)	<b>General Responsibilities</b> <ul style="list-style-type: none"><li>• Draft and edit form letters, pleadings, motions and discovery.</li></ul>	10%
6)	<b>Other Unit Support</b> <ul style="list-style-type: none"><li>• Provide advice and support to other business units as needed including Underwriting, Customer Services and Corporate Communications.</li><li>• Assist Product Team in the drafting of policy forms and endorsements.</li><li>• Assist Special Investigative Unit (SIU) with insurance fraud investigations and referrals.</li></ul>	10%

### **SECTION 3 – JOB SPECIFICATIONS**

Identify the minimum job specifications needed to perform the job. These include, knowledge, skills and abilities, and other job parameters.

**Knowledge:** What an incumbent must know to perform the job (required)

Comprehensive knowledge of property and liability claims practices and property policy forms.	Comprehensive knowledge of Florida laws governing and regulating insurers.
Proficient in Microsoft Office Suite.	Comprehensive knowledge of Florida Rules of Civil Procedure, Florida Rules of Evidence and Florida Rules of Appellate Procedure.

**Skills & Abilities:** What an incumbent must be able to do to perform the job (required)

Advanced skills in legal analysis, critical thinking, legal counseling, and problem solving; creativity in resolving unique and challenging business problems; good legal and business judgment.	Forward and creative thinking, with the confidence to present and advocate for the implementation of ideas.
Ability to initiate, organize, prioritize, and coordinate complex projects and cases.	Strong ability to effectively interact with internal and external business partners, attorneys, claimants and policyholders.
Strong sense of urgency, personal responsibility, and accountability; self-motivated, efficient and effective.	Able to work autonomously and as part of team (legal and project), to lead, follow, and collaborate.
Excellent communication (written and verbal), interpersonal, and presentation skills.	

### **SECTION 4 – PRIOR WORK EXPERIENCE**

Indicate the number of years of experience required and describe the type of prior RELATED work experience TYPICALLY needed. Include number of years  
\*supervisory/\*\*management experience required.

**Relevant Experience** –Please enter in the box below the minimum years of experience required

7 or more years of relevant experience in a firm or corporate setting, of which at least 5 years must be the handling of litigation and trials.



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### SECTION 5 – EDUCATION: *Indicate the level of education and area of concentration TYPICALLY needed. With an "X" below.*

LEVEL of Required Education	CONCENTRATION
<b>X</b> High School Diploma   GED <b>(required – do not delete the 'X')</b>	
Associate/Technical Degree <b>OR</b> 2 years relevant experience, <b>OR</b> a combination of both college and experience equivalent to 2 years	
<b>X</b> Bachelor's Degree <b>OR</b> 4 years relevant experience, <b>OR</b> a combination of college education and relevant experience equivalent to 4 years	
<b>X</b> Other Certifications   Licenses Required:	J.D. degree and admitted to Florida Bar

#### Please list any preferred Knowledge, Skills, Abilities or Education here:

- 10 years of litigation and trial experience
- Litigation and trial experience in property and casualty or other insurance claims.
- Experience in interfacing with insurance related agencies, such as the Florida Department of Financial Services and Office of Insurance Regulation experience
- Experience with Florida homeowners and commercial property insurance

### SECTION 6: Scope/Complexity of Work – *Describe the scope and complexity of the work involved with this job. Please provide the information below:*

What percentage of time is accountable for short-term operational goals?	20 %
What percentage of time is accountable for transactional, day to day operational support?	80 %

#### Physical Requirements:

In this section, we have included a table of common physical requirements that are essential to perform the job, please check all that apply. If you need to add a requirement use the blank boxes at the bottom of the table, or keep hitting your tab button to add additional rows. *(please put an "X" in the appropriate column)*

Physical Demand	Occasional	Frequent	Continuous	# of Pounds
Stationary position			X	
Move, Traverse		X		
Operate, Activate, Use, Prepare, Inspect, Place, Detect, Position		X		
Ascend/Descend, Work Atop, Traverse				
Position self (to), Move				
Communicate, Detect, Converse with, Discern, Convey, Express oneself, Exchange information		X		
Detect, Determine, Perceive, Identify, Recognize, Judge, Observe, Inspect, Estimate, Assess		X		
Move, Transport, Position, Put, Install, Remove				
Exposed, Work around				
Travel	X			





## Appendix A – Senior Counsel Job Description

APPROVAL HISTORY – FOR COMPENSATION USE ONLY	
Compensation	
Compensation Redesign Project	2/16/2014
Dwane Tyson, Director – Asst. Gen Counsel Claims & Lit,	12/18/2014
Mark Casteel, VP Assist General Counsel	12/18/2014
Maria Lang, HRBP	12/19/2014
MS – JD update/Gena B.	12/19/2017