

Sample Letters

Disclaimer

The following sample letters are to be used as a guide or example, and must be adjusted to suit your client's needs. Lawyers Mutual Insurance Company of Kentucky hereby disclaims any and all responsibility or liability that may be asserted or claimed arising from, or claimed to have arisen from, reliance upon the use of any of these samples by any person.

Sample Letters And Optional Paragraphs

The basis for the following sample letters and optional paragraphs are taken from a variety of sources to include the state bars of California and Wisconsin, and several Internet risk management websites. They have been edited as necessary to better accommodate Kentucky practice.

3. Letter of Engagement Contingency Fee

GULLETT, BREETZ & LONG
441 Bauchet Street
Los Angeles, CA 90012
(213) 680-9600
(Date)

GULLETT, BREETZ & LONG ("Attorney"), and **JOHN RESOR** ("Client") hereby agree that Attorney will provide legal services to Client on the terms set forth below.

1. CONDITIONS. This Agreement will not take effect, and Attorney will have no obligation to provide legal services, until Client returns a signed copy of this Agreement and pays the advance retainer, if any, called for under Paragraph 7.

2. SCOPE OF SERVICES. Client is hiring Attorney to represent Client in the matter of Client's claims against _____ [and possibly others as future investigation may indicate], arising out of _____ which occurred on or about _____.

If a court action is filed, Attorney will represent Client until a settlement or judgment, by way of arbitration or trial, is reached. Attorney will oppose any motion for a new trial or any other post-trial motions filed by an opposing party, or will make any appropriate post-trial motions on Client's behalf. After judgment, Attorney will not represent Client on any appeal, or in any proceeding to execute on the judgment, unless Client and Attorney agree that Attorney will provide such services and also agree upon additional fees, if any, to be paid to Attorney for such services. Services in any matter not described above will require a separate written agreement.

3. RESPONSIBILITIES OF THE PARTIES. Attorney will provide those legal services reasonably required to represent Client in prosecuting the claims described in Paragraph 2 and will take reasonable steps to keep Client informed of progress and developments, and to respond promptly to inquiries and communications. Client agrees to be truthful with Attorney, to cooperate, to keep Attorney informed of any information and developments which may come to Client's attention, to abide by this Agreement, to pay Attorney's bills for costs on time, and to keep Attorney advised of Client's address, telephone number and whereabouts. Client agrees to appear at all legal proceedings when Attorney deems it necessary, and generally to cooperate fully with Attorney in all matters related to the preparation and presentation of Client's claims.

4. LEGAL FEES. Attorney will only be compensated for legal services rendered if a recovery is obtained for Client. If no recovery is obtained, Client will be obligated to pay only for costs, disbursements and expenses, as described in Paragraph 6.

The fee to be paid to Attorney will be a percentage of the "net recovery," depending on the stage at which the settlement or judgment is reached. The term "net recovery" means: (1) the total of all amounts received by settlement, arbitration award or judgment, includ-

ing any award of attorneys fees, (2) minus all costs and disbursements set forth in Paragraph 6. [Net recovery shall also include the reasonable value of any non-monetary proceeds.]

Attorney's fee shall be calculated as follows:

- (i) If the matter is resolved before filing a lawsuit or formal initiation of proceedings, then Attorney's fee will be ___ percent (___%) of the net recovery;
- (ii) If the matter is resolved prior to ____ days before the date initially set for the trial or arbitration of the matter then Attorney's fee will be ___ percent (___%) of the net recovery; and
- (iii) If the matter is resolved after the times set forth in (i) and (ii), above, then Attorney's fee will be ____ percent (___%) of the net recovery.

In the event of Attorney's discharge or withdrawal as provided in Paragraph 11, Client agrees that, upon payment of the settlement, arbitration award or judgment in Client's favor in this matter, Attorney shall be entitled to be paid by Client a reasonable fee for the legal services provided. Such fee shall be determined by considering the following factors:

- (1) The actual number of hours expended by Attorney in performing legal services for Client;
- (2) Attorney's hourly rates;
- (3) The extent to which Attorney's services have contributed to the result obtained;
- (4) The amount of the fee in proportion to the value of the services performed;
- (5) The amount of recovery obtained;
- (6) Time limitations imposed on Attorney by Client or by the circumstances; and
- (7) The experience, reputation and ability of personnel performing the services.

5. NEGOTIABILITY OF FEES. The rates set forth above are not set by law, but are negotiable between an attorney and client.

6. COSTS AND LITIGATION EXPENSES. Attorney will incur various costs and expenses in performing legal services under this Agreement. Client agrees to pay for all costs, disbursements and expenses paid or owed by Client in connection with this matter, or which have been advanced by Attorney on Client's behalf and which have not been previously paid or reimbursed to Attorney. Costs, disbursements and litigation expenses commonly include court fees, jury fees, service of process charges, court and deposition reporters' fees, photocopying and reproduction costs, notary fees, long distance telephone charges, messenger and other delivery fees, postage, deposition costs, travel costs including parking, mileage, transportation, meals and hotel costs, investigation expenses, consultant, expert witness, professional mediator, arbitrator and/or special master fees and other similar items. Except for the items listed below, costs and expenses will be charged at Attorney's cost.

- In-office photocopying: ____ /page
- Facsimile charges: ____ /page
- Mileage: ____ /mile
- Other: ____

Client understands that, as set forth in Paragraph 7 below, an advance retainer for costs may be required before the expenditure is made by Attorney.

To aid in the preparation or presentation of Client's case, it may become necessary to hire expert witnesses, consultants or investigators. Attorney will select any expert witnesses, consultants or investigators to be hired, and Client will be informed of persons chosen and their charges.

Client authorizes Attorney to incur all reasonable costs and to hire any investigators, consultants or expert witnesses reasonably necessary in Attorney's judgment unless one or both of the clauses below are initialed by Attorney.

Attorney shall obtain Client's consent before incurring any costs in excess of \$____.

Attorney shall obtain Client's consent before retaining outside investigators, consultants, or expert witnesses.

If an award of fees and/or costs is sought on Client's behalf in this action, Client understands that the amount which the court may order as fees and/or costs is the amount the court believes the party is entitled to recover, and does not determine what fees and/or costs Attorney is entitled to charge Client or that only the fees and/or costs which were allowed were reasonable. Client agrees that, whether or not attorneys' fees or costs are awarded by the court in Client's case, Client will remain responsible for the payment, in full, of all attorneys' fees and costs in accordance with this Agreement.

Additionally, Client understands that if Client's case proceeds to court action or arbitration, Client may be required to pay fees and/or costs to other parties in the action. Any such award will be entirely the responsibility of Client.

7. ADVANCE RETAINER. Client agrees to pay Attorney an advance retainer for costs of \$____, to be returned with this signed Agreement. Attorney will hold this advance retainer in a trust account. Client hereby authorizes Attorney to use that retainer to pay the costs, disbursements and other expenses incurred under this Agreement.

When Client's advance retainer is exhausted, Attorney reserves the right to demand further retainers, each up to a maximum of \$____.

Once a trial or arbitration date is set, Attorney will require Client to pay all sums then owing, and a retainer for the costs Attorney estimates will be incurred in preparing for

and completing the trial or arbitration, as well as the jury fees or arbitration fees likely to be assessed.

Client agrees to pay all retainers required under this Agreement within 10 days of Attorney's demand. Any deposit that is unused at the conclusion of Attorney's services will be refunded.

8. MONTHLY BILLING STATEMENTS. Attorney will send Client monthly billing statements for costs, disbursements and expenses incurred in connection with this matter. Each statement is to be paid in full within 15 days after the date of such statement.

9. APPROVAL NECESSARY FOR SETTLEMENT. Attorney will not make any settlement or compromise of any nature of any of Client's claims without Client's prior approval. Client retains the absolute right to accept or reject any settlement. Client agrees to consider seriously any settlement offer Attorney recommends before making a decision to accept or reject such offer. Client agrees not to make any settlement or compromise of any nature of any of Client's claims without prior notice to Attorney.

10. LIMITATION OF REPRESENTATION. Attorney is representing Client only on the matter described in Paragraph 2. Attorney's representation does not include independent or related matters that may arise, including, among other things, claims for property damage, workers' compensation, disputes with a health care provider about the amount owed for their services, or claims for reimbursement (subrogation) by any insurance company for benefits paid under an insurance policy. This Agreement also does not include defending Client against, or representing Client in any claims that may be asserted against Client as a cross-claim or counter-claim in Client's case. This Agreement does not apply to any other legal matters. If any such matters arise later, Attorney and Client will either negotiate a separate agreement if Client and Attorney agree that Attorney will perform such additional legal work or Client will engage separate counsel with respect to the cross-claim or counter-claim or additional legal work.

11. DISCHARGE AND WITHDRAWAL. Client may discharge Attorney at any time, upon written notice to Attorney. Attorney may withdraw from representation of Client (a) with Client's consent, (b) upon court approval, or (c) if no court action has been filed, for good cause and upon reasonable notice to Client if the Kentucky Rules of Professional Conduct permit. Good cause includes Client's breach of this contract, Client's refusal to cooperate with Attorney or to follow Attorney's advice on a material matter, or any other fact or circumstance that would render Attorney's continuing representation unlawful or unethical.

Notwithstanding Attorney's withdrawal or Client's notice of discharge, and without regard to the reasons for the withdrawal or discharge, Client will remain obligated to pay Attorney for all costs incurred prior to the termination and, in the event that there is any net recovery obtained by Client after conclusion of Attorney's services, Client remains obligated to pay Attorney for the reasonable value of all services rendered from the effective date of this Agreement to the date of discharge.

12. CONCLUSION OF SERVICES. When Attorney's services conclude, all unpaid charges will immediately become due and payable. Attorney is authorized to use any funds held in Attorney's trust account as a retainer against costs to apply to such unpaid charges. After Attorney's services conclude, upon request, Client's file and property will be delivered to Client, or Client's other attorney, whether or not Client has paid any fees and/or costs owed to Attorney.

13. RECEIPT OF PROCEEDS. All proceeds of Client's case shall be deposited into Attorney's trust account for disbursement in accordance with the provisions of this Agreement.

14. DISCLAIMER OF GUARANTEE. Nothing in this Agreement and nothing in Attorney's statements to Client will be construed as a promise or guarantee about the outcome of this matter. Attorney makes no such promises or guarantees. There can be no assurance that Client will recover any sum or sums in this matter. Attorney's comments about the outcome of this matter are expressions of opinion only. Client acknowledges that Attorney has made no promise or guarantees about the outcome.

I cannot and do not guarantee favorable outcomes. Negotiations and litigation are not precise activities. Sometimes judges do not understand particular factual or legal nuances of a case and other times they may be looking for an opportunity to judicially modify the law. Thus, there are adverse risks associated with negotiations and litigation. Those risks will be present here. Unfavorable outcomes do in fact occur. With this in mind, I will represent your interests in this matter to the best of my ability.

15. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties. No other agreement, statement or promise made on or before the effective date of this Agreement will be binding on the parties.

16. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY. If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

17. MODIFICATION BY SUBSEQUENT AGREEMENT. This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by both of them or an oral agreement only to the extent that the parties carry it out.

18. EFFECTIVE DATE. This Agreement will govern all legal services performed by Attorney on behalf of Client commencing with the date Attorney first performed services. The date at the beginning of the Agreement is for reference only. Even if this Agreement does not take effect, Client will be obligated to pay Attorney the reasonable value of any services Attorney may have performed for Client.

THE PARTIES HAVE READ AND UNDERSTOOD THE FOREGOING TERMS AND AGREE TO THEM, AS OF THE DATE ATTORNEY FIRST PROVIDED SERVICES. IF MORE THAN ONE CLIENT SIGNS BELOW, EACH AGREES TO BE LIABLE JOINTLY AND SEVERALLY FOR ALL OBLIGATIONS UNDER THIS AGREEMENT. THE CLIENT SHALL RECEIVE A FULLY EXECUTED DUPLICATE OF THIS AGREEMENT.

DATED:

JOHN RESOR

Address:

Telephone:

DATED:

GULLETT, BREETZ & LONG

By: PETE GULLETT