

(Insurance or SURETY)
Bad Faith CLAIMS EXPERT WITNESS
ENGAGEMENT Agreement

(expert company logo here)

(Name of expert company) and (name of law firm)

(Insurance or Surety) Bad Faith Claims Expert Witness Engagement Agreement

1. **Parties.** This Expert Witness Engagement Agreement (“Agreement”) is made between **(expert company name)** (“Claims Expert” or “Expert”) and **(Law Firm [redacted])** (“Client Firm” or “Client”) regarding the underlying legal matter of **(Case name [redacted], Case Number [redacted])**, in the **(Court name [redacted])**.
2. **Retention.** The parties agree that Client will only retain Claims Expert once this contract has been mutually executed and Client Firm has paid the initial security retention retainer specified in paragraph 4.b. Expert has no duties to Client Firm until such time.
3. **Claims Expert’s Fees and Expenses.** The parties agree that the fee for all the time the Claims Expert spends on the case for reviewing documents, study, writing, and testimony will be compensated at the following rates:¹

Expert	Review and Report Rate	Testimony Rate
(1) Gregory Stephen Arnold ² (name of expert witness company)	\$600.00/hour	\$600.00/hour non-refundable, four-hour minimum paid in advance
Support Staff		
(2) (a) Sherry L. LaVallee, Administrative Support/Light Secretarial		\$ 75.00/hour
(b) Stacy Hampton, Administrative Support, Light Secretarial		\$ 75.00/hour
(3) (a) Laura Brown, Graphic Artist / Attachments to Expert Reports		\$ 125.00/hour
(b) Larua Brown, Project Management/Report Assembly; Signature Invoice Detail Dashboards		\$ 125.00/hour

It is agreed that this Bad Faith Claims Expert Engagement Agreement (“Agreement”) specifically includes (but is not limited to) factual and other research; legal research of cases and statutes confirming the standards of care and industry standards in the jurisdictions of the claims and/or suits; conferences; consultations with Client; reviewing Case Materials (documents; including Bates-stamped exhibits;

¹ See also Fee Schedule, Attachment A.

² See also CV, Attachment B. Other credentials of the Expert witness can be found at both www.TexasLexis.com and www.BALEX.Solutions.

pleadings; motions; court orders; deposition transcripts; arbitration proceeding documents and awards); organizing Case Materials; analysis; testing; responding to **Expert Discovery Requests** pursuant to FRCP 26 or a state equivalent; Expert Report writing; responding to other experts' reports; testifying; investigating; reading and signing deposition transcripts and errata sheets; local portal-to-portal travel; long distance portal-to-portal travel; waiting time; preparing exhibits for attachment to Expert Reports; preparing sworn affidavits and/or declarations; preparing demonstrative aids / graphics; and preparation time for testifying at deposition, trial, hearing, arbitration or other venues. Expert's time will be tracked and invoiced to the nearest 0.25 of an hour. In lieu of the above hourly rate, duties that reasonably require overnight travel will be billed at the flat rate of \$6,000.00/day on site. In any and all events, and in addition, Client will be responsible for all reasonable out-of-pocket expenses including, but not limited to travel, testing, research, copying, storage of evidence or documents (only applicable to hard copies, which is rare), *etc.*

4. Payment Terms.

a. All payments are to be made *via* wire transfer only to: (name of expert witness company).

Expert's bank account and Taxpayer ID is shown on **Attachment C**, Payment Instructions.

b. The security retainer amount is **\$15,000.00**. Expert will not invoice against this security retainer but will hold the retainer in a separate account until the conclusion of the matter, at which point the refundable portion of the retainer will be refunded if not needed or credited against the final invoice. Client will inform Expert when Client considers the case settled and Client will then request a refund of the remaining portion of the retainer at such time.

c. The *non-refundable* portion of the security retention retainer amount is **\$5,000.00**. This non-refundable retainer portion is the minimum fee due Expert and is earned upon receipt.

d. Expert agrees to invoice Client no less frequently than monthly.

e. All invoices will be paid within 30 days - or sooner if so specified in this Contract.

f. Overdue, unpaid invoices will accrue interest at a rate of 1.5% per month.

g. Testimony dates have a significant impact upon Claims Expert's ability to accept work from other clients. Therefore, a minimum, non-refundable Claims Expert testimony fee (four-hour minimum specified in Paragraph 3(1)) for any time Claims Expert is asked to reserve for testifying (at trial, hearing, deposition, arbitration or other venue) shall be paid immediately upon Client's request that Expert reserve the date for such testimony. Client will confirm deposition and trial dates no later than two weeks from such scheduled testimony. Expert will provide Client with a testimony invoice the same day Client gives testimony date instructions to Claims Expert.

h. Preparation for said testimony (separate from prepaid testimony) must be paid in advance and in full 5 (five) business days prior to the time reserved for the scheduled testimony. Claims Expert is

under no contractual obligation to reserve the time on his calendar or appear to testify and provide opinions unless Claims Expert has received this payment in full at least 5 (five) business days prior to the time reserved for the scheduled testimony. To avoid confusion or surprises, Client will send Claims Expert a reminder *via* email fourteen (14) calendar days confirming the time, date, and location of any required testimony of Claims Expert.

i. Client is responsible for collecting any and all deposition fees owed by other lawyers or parties. In the event Claims Expert's deposition fees are reduced by court order, Client shall still pay the full Claims Expert fee specified in paragraph 3.1 to 3.3.

j. Expert will invoice Client monthly for services, including the writing of Expert Report(s). All fees must be paid in full before a draft or final Expert Report is released to Client, other parties or anyone else. Claims Expert is under no duty to release a draft of final Expert Report until Claims Expert has been paid in full for all work performed to date. To avoid confusion or surprises, Client will send Claims Expert a reminder *via* email fourteen (14) calendar days confirming the time and date of any required Expert Reports of Claims Expert. Unless otherwise directed, Claims Expert will deliver the draft or final Expert Report, as the case may be, by 5:00 pm CST on the date said Expert Report is required.

k. Claims Expert will invoice Client before scheduled testimony for any outstanding fees and expenses for work performed to date. All such fees must be paid in full before Claims Expert testifies. Claims Expert is under no contractual duty to appear to testify and provide opinions until Claims Expert has been paid in full for all outstanding services performed and expenses incurred on behalf of Client. If an opposing law firm is to pay for Claims Expert's deposition, the invoice for same will go to the retaining firm, Client, which will forward it, along with the W-9 of Claims Expert already on file with Client, to the opposing law firm. The fact that a law firm other than Client pays for deposition time does not make that firm an additional client of Claims Expert.

l. All invoices must be current prior to depositions or trial/arbitration testimony.

m. Expert may defer or terminate services without liability for consequences if not paid.

n. In the event Client disputes, disagrees with, or questions any amount due under an invoice, Client shall communicate such disagreement or question to Claims Expert, in writing, within 30 days of invoice date; otherwise, all such disputes, disagreements, or questions are waived.

5. Fees for Late Notice Cancellation or Rescheduling of Testimony.

a. Client understands that Claims Expert will suffer damages from late notice cancellation or rescheduling of Claims Expert's testimony. Since the precise amount of these damages would be difficult or impossible to determine, Claims Expert shall instead be entitled to retain the pre-paid four-hour, non-refundable testimony fees referenced in 3.1 and 4.g.

- b. The fees specified in paragraphs 3.1 and 4.g. will be credited against rescheduled testimony. Expert will charge Client for any and all travel scheduling and time spent reserving flights, hotels, and rental cars.
- c. In the event Claims Expert's testimony is completed in less time than the four-hour minimum reserved time pursuant to paragraph 3(1), Claims Expert will retain 100% of the amount specified in paragraphs 3.1 and 4.g.
- d. In the event of any cancellation or rescheduling of testimony, Client shall be responsible for all non-refundable out-of-pocket travel expenses incurred by Claims Expert such as airline tickets, hotel room reservations, and / or rental car reservations.

6. Duties of Client Firm. The Client's duties specifically include, but are not limited to:

- a. Abiding by the applicable rules of professional conduct and responsibility for attorneys.
- b. Making all payments according to terms specified in Paragraphs 3, 4, and 5.
- c. Providing Expert with all requested non-privileged Case Materials, including copies of, or access to, all requested non-privileged, arguably-relevant documents, evidence and other materials in the underlying legal matter, including all requested claim file and underwriting materials available to Client firm.
- d. Notifying Claims Expert of the names and firm affiliations of all parties; attorneys; insurance companies; surety companies; construction consultants; insurance consultants; insurance experts; surety consultants; public adjusters; surety experts; economic experts; damages experts; delay experts; soils experts; geothermal experts; or any other type of expert in the case, so that Claims Expert can check for any conflicts of interest.
- e. Providing Claims Expert with prompt notice of any ***Daubert*** motions, ***Frye*** motions, motions in limine, or other pre-trial motions made by other parties or persons to restrict, exclude or in any way limit Claims Expert's testimony, Claims Expert's written report(s), Claims Expert's opinion(s) or Claims Expert's participation in the underlying legal matter. Client agrees to allow Claims Expert to assist in preparation of any response to such motions, and, where appropriate and reasonable, Claims Expert may retain his own counsel, at Client Firm's expense, to assist in the preparation of any response.
- f. Obtaining Claims Expert's advance approval (for accuracy) of the relevant portions of any and all answers to interrogatories, motions, **Expert Designations or Disclosures** or other documents which summarize Claims Expert's qualifications, methodology, opinion(s) and/or anticipated testimony. Claims Expert Designation shall **NOT** state that Claims Expert will opine on whether surety acted in "bad faith", since that is the province of the jury. Claims Expert shall have control

and editorial rights over the language of the **Expert Designations or Disclosures** as they relate to this Claims Expert.

- i. A \$250.00 Claims Expert Designation fee applies at time of designation or disclosure of the name of your Claims Expert. This is credited against, or waived, in the event the Claims Expert is actually hired and the Retainer Fee is paid.
 - ii. If Expert is expected to respond to **Expert Discovery Requests** pursuant to FRCP 26 or a state equivalent from opposing party's law firm, Expert will charge \$600.00 per hour for research and drafting such discovery responses, or, in the alternative, Client Firm will reimburse Claims Expert for retaining separate counsel to respond to such **Expert Discovery Requests**. Otherwise, retaining firm to do so, with Expert's prior review and approval.
 - iii. Expert is required to provide lists of cases where Expert was a retained expert witness in other matters going back a limited number of years. Expert is not required to provide copies of reports, transcripts, or other such materials as part of an Expert Discovery Request. Client Firm agrees that it will not provide any such materials except in response to a proper subpoena, which it will contest. Expert will not provide such materials except in response to a proper subpoena, and such costs shall be for the account of retaining Law Firm Client.
- g. Being available as reasonably requested to meet, at least electronically, as with Microsoft Teams or Zoom, with Claims Expert prior to anticipated testimony. To facilitate a Teams Meeting or Zoom practice session with Claims Expert to ensure proper functioning of the desired software.
- h. Promptly notifying Claims Expert of when and where Claims Expert may be requested to appear to testify, consistent with terms specified above.
- i. Promptly notifying Claims Expert of any issues related to paragraph 8.b.below, to which Client is or becomes aware.
- j. Promptly notifying Claims Expert of the settlement or final adjudication of the underlying legal matter so that Claims Expert may plan his availability to other clients and update his Expert statistics.
- k. Firm will pay Expert one hour of review time whenever there is a lapse of activity for ninety (90) days. This is for Expert's review of his written Expert Report(s), Affidavits, Declarations, *etc.*, and otherwise refreshing his knowledge of the case.

7. Duties of Expert. The Claims Expert's duties are:

- a. To truthfully represent Claims Expert's credentials.
- b. To formulate and express with honesty and due care Claims Expert's opinion(s) in those areas (and only those areas) where Claims Expert feels qualified to render an opinion and where Client has requested an opinion. Client agrees that Claims Expert's opinion(s) are not preordained, might be contrary to Client's position, and are subject to modification as a result of new or additional Case Material information.
- c. To cease work on the underlying legal matter and promptly inform Client whenever Claims Expert has accrued unpaid fees and expenses totaling more than \$15,000.00. In this event, Claims Expert shall not perform further work on the underlying legal matter until Client gives approval. This may require billing by Claims Expert on a **weekly basis** in the early and late stages of the assignment, depending upon timing of significant milestones, such as preparation of an Expert Report, deposition testimony, or trial testimony.
- d. Expert is under no duty to provide and express opinions if Claims Expert is given time deadlines or cost-based or other restrictions by Client that would not reasonably allow Claims Expert to in good faith formulate and express his opinions with reasonable care.
- e. Subject to paragraph 7.d., Claims Expert will prepare a written draft and/or final Expert Report, if Client requests one. No written opinions will be provided outside a draft or final Expert Report.
- f. Subject to paragraph 7.d. and to circumstances beyond the Claims Expert's control, to meet all reasonable deadlines requested by Client.
- g. To retain and preserve (during this engagement) all evidence provided to Claims Expert from the underlying legal matter unless Client gives written permission for early destructive / deletion. Expert uses AVG electronic file shredding, which is irreversible.
- h. To be available on reasonable notice to testify.
- i. To be available on reasonable notice to consult with Client. Claims Experts' contact data is: Gregory Stephen Arnold (**company name**), (509) 212-5311, (**Arnold email address**).
- j. To work exclusively with Client Firm and local counsel, if any, in the underlying legal matter unless the parties mutually agree in writing otherwise. Client Firm will identify any other firm or entity that Client Firm also considers to be a client of Claims Expert.
- k. Upon receipt from Client of the list of parties; attorneys; insurance companies; surety companies; construction consultants; surety consultants; surety experts, and others specified in paragraph 6.d. and others not specified but who should be reasonably disclosed to Claims Expert, to within

30 days check for conflicts of interest with due care and within the same 30-day period to notify Client Firm of any conflicts of interest discovered that preclude Claims Expert's further involvement in the underlying legal matter. **Claims Expert confirms that, based upon the pleadings and attachments thereto already received and reviewed, there are no conflicts of interest.**

8. Expert's Right to Withdrawal from Case. Expert shall have the absolute right to withdraw from the engagement, without any liability, if Client violates any of the duties specified in paragraph 6 above or if:

- a. Claims Expert discovers a conflict of interest which precludes Claims Expert's further involvement in the underlying legal matter.
- b. Claims Expert discovers that because of legal restrictions, Claims Expert's involvement or testimony in the case could reasonably be deemed to be practicing Claims Expert's profession without a license.
- c. Claims Expert determines in Claims Expert's sole discretion that Client's position lacks merit or that Claims Expert cannot add actual value to Client Firm's case. **Claims Expert confirms that, based upon the Complaint and Answer and attached documents in this matter, and subject to confirmation of important issues that may be available from Case Materials to be received and reviewed, Claims Expert believes that Client's position has merit and that Claims Expert can add value to the case as a Claims Expert.**

9. Withdrawal.

- a. Notice of withdrawal under Paragraph 8 shall be in writing from Claims Expert to Client. In the event of withdrawal, the parties agree that Client remains fully liable for all accrued but unpaid fees, expenses, and interest.
- b. If Claims Expert defers services as described in 4.m. above, Claims Expert has right to terminate this agreement upon three days' notice, issuance of a final invoice, and return of any confidential files (no privileged information will be shared with Claims Expert). It is anticipated all files shared with Claims Expert will be electronic files, which is customary. All outstanding invoices shall remain due and payable.

10. Termination. This contract shall be terminated upon written notice to Claims Expert from Client at any time, by Claims Expert's withdrawal pursuant to paragraph 8, at such time as Client is no longer involved in the underlying legal matter, or upon the settlement or final adjudication of the underlying legal matter. In the event of termination Client is still responsible for all sums owed Claims Expert.

- 11. Document/Evidence Retention.** Expert shall have no duty to retain any documents, reports, evidence, transcripts, exhibits, e-mails, electronic files, or other materials from the underlying legal matter for more than 30 (thirty) days following the termination of this agreement. Claims Expert shall return (at Client's expense) all records and evidence in the underlying legal matter to Client if a written request to do so is received by Claims Expert within the 30 (thirty) days following the termination of this agreement. It is expected that Claims Expert will receive Case Materials only by electronic means.
- 12. Airline Flights.** All airline flights taken by Claims Expert shorter than two (2) hours shall be direct, non-stop, coach class or better where possible (never economy or basic economy class). All flights taken by Claims Expert longer than two (2) hours shall be by business class, or first class if business class is unavailable.
- 13. Disputes.** Any controversy, claim or dispute arising out of or relating to this Contract, shall be resolved first through nonbinding mediation and if unsuccessful, second through binding arbitration conducted in accordance with the rules of the American Arbitration Association in the State in which the Claims Expert is domiciled. The law of the State in which the Claims Expert is domiciled will be the governing law. The arbitration award will be enforceable in any state or federal court. Mediations and arbitrations will be conducted virtually using JAMS Austin, Texas Resolution Center. Each party pays a pro-rata share of the mediation fee. In any arbitration or court proceeding, the prevailing party shall be entitled to recover reasonable attorneys' fees, costs and expenses. In addition, Client shall be responsible for payment of attorneys' fees, costs and expenses associated with the Claims Expert's prevailing efforts to collect monies owed under the terms of this Contract.
- 14. Miscellaneous.** Each party agrees that it may not assign its interest, rights or duties under this Contract to any other person or entity without the other party's prior approval. (Expert is under no duty to work for successor law firms on the underlying legal matter). The performance of this contract by either party is subject to acts of God, death, disability, government authority, disaster or other emergencies, any of which make it illegal or impossible to carry out the agreement. It is provided that this contract may be terminated for any one or more of such reasons by written notice from one party to the other without liability. If either party agrees to waive its right to enforce any term of this contract, it does not waive its right to enforce any other terms of this contract. This written contract represents the entire understanding between the Claims Expert and Client Firm. The individual signing this contract on behalf of Client Firm represents and warrants that he/she is duly authorized to bind Client Firm.

15. Additional Provisions (check all those that apply).

- a. ☐ **Expert Unavailability:** Notwithstanding Paragraph 7, Claims Expert is unavailable to fulfill obligations under this contract during the following time frame(s):
See **Attachment F (planned)**.
- b. ☐ **Timeline Matrix.** Firm agrees to make its best efforts to provide a shell Timeline Matrix, whereby the Case Materials are provided to Claims Expert in such a way that at least the date of the items in the Case Materials are in the left column of a matrix and the exhibit number is in the column to the right. If a natural language description of the item could be in another column, that would be ideal.
- c. ☐ **Scope of Work.** Client is requesting an opinion in the following area(s):
Whether the (insurance or surety) company conformed to (insurance or surety) industry standards in response to (Insurance or Payment or Performance Bond claims) from (name of party).
Expert will not comment upon liability or damages. Expert cannot provide an opinion whether the surety acted in bad faith, as that is for the attorneys to argue and for the jury to decide.
- d. ☐ **Additional terms are attached to this contract as Appendix C. Payment Instructions** (planned).
- e. ☐ **The following additional terms apply:**
- i. All documents to be reviewed must come directly from Client Firm and/or local counsel, and not the law firms' client, (name). Any receipt of fees directly from law firm's client, (name), does not make the law firm's client also a client of Claims Expert.
 - ii. Claims Expert has no obligation to, and will not, interview the law firms' client, (name), unless the (insurer or surety) or their retained consultant(s) had interviewed (name of firm's client).
 - iii. Retaining law firm is responsible for filing all legal notices and notices to the state's DOI, including any specially-required notice(s), if any.

(name of expert company)

(Client)

Signature

Gregory Stephen Arnold

Signature

Date: (Month) ____, 2025

Date: (Month) ____, 2025

Attachment A – Expert’s CV

Attachment B – Compensation / Fee Schedule

Attachment C – (planned) Payment Instructions

Attachment D – (planned) IRS Form W-9

Attachment E – (planned) Engagement / Retainer Invoice

Attachment F – (planned) List of Times Claims Expert Will Not Be Available