The Tri-Partite Relationship: Understanding and Managing the Relationship of the Insured, the Insurer, and Defense Counsel

---

Michael A. Airdo
Kopon Airdo, LLC
233 South Wacker Drive, Suite 4450
Chicago, Illinois 60606
p 312.506.4450
f 312.506.4460
KoponAirdo.Com

Jeffrey A. Dollinger
Woolls & Peer, P.C.
One Wilshire Boulevard, 22nd Floor
Los Angeles, California 90017
p (213) 629-1600
f (213) 629-1660
WoollsPeer.Com

Neil G. Wolf
General Counsel
Benedictine University
5700 College Road
Scholl Hall, Rm. 241
Lisle, Illinois 60532-0900
p (630) 829-6000

© 2011 Kopon Airdo, LLC

The Tri-Partite Relationship: Understanding and Managing the Relationship of the Insured, the Insurer, and Defense Counsel

Michael A. Airdo, Kopon Airdo, LLC[1]
233 S. Wacker Driver, Suite 445, Chicago, Illinois 60606
P (312) 506-4450 / F ((312) 506-4460 / koponairdo.com

Jeffrey A. Dollinger, Woolls & Peer, P.C.
One Wilshire Boulevard, 22nd Floor, Los Angeles, California 90017
P (213) 629-1600 / F (213) 629-1660 / woollspeer.com

Neil Wolf, General Counsel, Benedictine University
5700 College Road, Scholl Hall, Rm. 241, Lisle, Illinois 60532-0900
P (630) 829-6000 ben.edu

For almost anyone, the arrival of a process server at the door delivering a complaint filed against them sets off a host of questions and concerns. Primary among these issues is a question that often has very little to do with the allegations against them. Instead, finding themselves in the new role of defendant, most people often ask: what is this going to cost me, and how am I going to pay for it? This question may be quickly followed by another: how do we find the right lawyer to represent us? Many defendants believe the answer is short and simple: insurance. These defendants, after taking a moment of pride in their forethought to purchase a general liability insurance policy, make a call to their insurance broker or agent to report the suit. Once their insurance carrier assigns them defense counsel, the insured-defendants may believe they are now free to get back to their real business, and leave the defense in the capable hands of its insurance carrier and the insurer-retained defense counsel.

In reality, however, the tender of a lawsuit for defense gives rise to a complex set of rights and duties for both the insurer and the insured, as well as the insurer-retained defense counsel, that, in some cases, may rival the issues presented by the underlying litigation. The tri-partite relationship, between the insurer, insured, and insurer-retained defense counsel, is one that can benefit all involved, but that must be managed and evaluated at each stage of the litigation, based on a significant body of case law that often varies significantly by jurisdiction. Issues may develop that can pit the interests of all three parties directly in conflict with one another, and that can significantly impact the outcome of the underlying litigation for reasons entirely unrelated to the actual facts of the case of the legal theories at issue. Moreover, each party to the relationship will likely bring a unique perspective to the handling of the underlying case, including individual concerns, obligations, duties, rights, and interests, which may not be fully understood by the other parties, or which may create conflict that threatens to undermine the benefits of the relationship.

This article is intended to serve as practical guide for the three parties to this relationship, the insurer, the insured, and insurer-retained defense counsel, to spotting the potential issues that

[1] The authors would like to thank Mollie Nolan Werwas, an Associate at Kopon Airdo, LLC, for her assistance in the researching and writing of this article.

© 2011 Kopon Airdo, LLC

may arise from their relation, beginning at the point the insured's decides to tender a lawsuit for coverage, through settlement negotiations and trial. Because the nature of each party's rights, duties, and obligations varies significantly by jurisdiction, we have not attempted to fully analyze these issues, but, instead, have provided an appendix identifying leading cases in each jurisdiction that discuss this tri-partite relationship. After reviewing this article, it is our hope that all parties to the relationship will have a greater awareness of their unique role in the relationship, and issues that may present themselves as part of that relationship.

Tendering the Suit for Coverage: Considerations for the Insured

While many insureds' immediate response to being served with a lawsuit is to quickly notify their insurance broker or carrier, for other defendants, the decision to tender a suit for coverage can often require investigation and consideration of a number of issues.

For some defendants, it may not yet be clear whether they have an insurance policy that applies to the lawsuit filed against them. For example, claims involving environmental damage or toxic torts may involve injuries that have only recently been discovered by the plaintiff, but that arise from actions taken by the defendant many years, or even decades, prior. The defendant must investigate any coverage that it had at the time those actions were taken, and must also determine whether its current policies include any claims-made coverage that could apply to the suit. For other defendants, the decision to tender the case might depend on the value of damages sought by the plaintiff, or the nature of the plaintiff's claims. A defendant may decide that it would prefer to control its own defense, or quickly resolve a claim on its own, rather than risk increased premiums for tendering a claim with a value that does not exceed the insured's deductible or self-insured retention. In still other cases, the defendant may know that it has coverage under several policies, perhaps including its own insurance policy and other policies to which it has been added as an additional insured as part of a business transaction. Those defendants must determine whether to tender the claim to all of its various insurance carriers, or, in some jurisdictions, whether to "target" its tender to just one of its carriers. Finally, for defendants who have multiple levels of primary and excess coverage, or different types of policies that may all apply to the suit, determining which carriers to notify of the case may depend upon the nature and value of the plaintiff's claims.

To best protect their interests, defendants must approach the investigation of insurance coverage, and the question of whether a lawsuit can be tendered to an insurance carrier, as an issue to address immediately upon receipt of a newly filed lawsuit, and one to be revisited regularly throughout the course of litigation. It is usually best that insures work with their personal counsel in this process. While it is always in the insured's best interest to investigate all avenues of coverage at the outset of litigation, an insured may often learn additional facts or information during the course of its investigation or during discovery that opens additional avenues for insurance coverage. For instance, a plaintiff may amend his complaint to include additional causes of action that trigger new or different insurance policies than what may have been identified by the defendant at the outset of the case. Alternatively, facts may be learned in discovery that suggest the occurrence giving rise to the plaintiff's claim happened at a time other than what was alleged in the complaint, thus triggering coverage under a different policy period than the accident date relied upon in the original tender. In addition, a defendant may discover

© 2011 Kopon Airdo, LLC

that a third-party defendant should be added to the case, and the original defendant may be entitled to coverage as an additional insured based on its relationship to that third-party. Consequently, an insured defendant should approach the investigation and discovery process with an awareness of facts that may be learned that could give rise to additional coverage options.

Once the insured defendant makes the decision to tender the lawsuit, and identifies the appropriate carrier to whom the case will be tendered, the insured, or its personal counsel, must determine what information should be included as part of the tender. Information to be included in a tender letter is also dictated and/or influenced by state law. For instance, in some jurisdictions, the insurer's duty to defend depends entirely upon the allegations contained in the four corners of the complaint. In other jurisdictions, however, the insurer is also required to consider other information learned by the insured that may give rise to coverage, or, what is contained in the insurance policy. Thus, particularly in cases where the insured has gathered information during its investigation, or during discovery, that gives rise to coverage, the insured must consider whether this information should be included in its tender to its insurance carrier, in addition to a copy of the complaint and any information or documents necessary to identify the policy pursuant to which the tender has been made. The insured should also consider whether the information that it is sharing with the insurer is subject to any type of privilege, and whether providing that information to the insurer before coverage is accepted would waive any applicable privileges, and make the information discoverable in the underlying case.

In all cases, an insured should make every effort to tender any litigation to a relevant insurance carrier as soon as possible after discovering that the policy may provide coverage for the suit. In many jurisdictions, the insurer's duty to defend encompasses all defense costs from the date of tender, regardless of when the insurer makes a decision to accept coverage. In addition, many insurance policies include a provision requiring timely tendering of claims, and an insurer may use a late tender as a basis for denying coverage or reserving rights.

Finally, the insured should review its policy to anticipate the coverage position that may be taken by its insurer. If the insured has reason to believe that the complaint filed against it will likely give rise to a reservation of rights by the insurer, the insured may need to have a strategy in place for defense of the suit if it will have a right to select independent counsel. In addition, the insured may need to begin gathering information and other materials to support its demand for coverage if requested by the insurer as part of its investigation before coverage is accepted.

The Insurer's Response: Reserving Rights

In the majority of cases, an insurer's first notice of a claim for coverage is its receipt of its insured's tender of a lawsuit. Insurers should be aware, however, that some jurisdictions impose duties on the insurer from the time it first receives any information or knowledge of the claim, whether from the insured or another source, regardless of when a formal tender of the claim is made. Like the insured, the insurer has far more issues to consider than simply assigning defense counsel to the claim. Also, like the insured, many of the issues faced by the insurer require careful consideration of number of different issues before defense counsel can be assigned, even in cases where the insurer determines that the suit is covered by its policy.

© 2011 Kopon Airdo, LLC

First, the insurer must determine whether it has sufficient information to make a coverage determination, and must determine what materials are relevant to its coverage decision. As noted above, some jurisdictions require that an insurer's coverage duties and obligations be based solely on the allegations contained in the tendered complaint. In other jurisdictions, however, the insurer may be required to consider additional information supplied by the insured, or learned by the insurer during the course of its investigation.

After reviewing the language of its policy, and examining all information regarding the tendered claim that it is required to consider, and finding that the suit, or part of it, is covered by the policy, the insurer must then determine whether to issue a reservation of rights letter, or to appoint defense counsel without reservation. Issuing a reservation of rights letter can, in many jurisdictions, trigger additional duties for the insurer and rights for the insured. In some jurisdictions, issuance of a reservation of rights letter, in and of itself, creates a potential for conflict that triggers an insured's right to select independent counsel. In other jurisdictions, an actual conflict must exist for an insured to have a right to independent counsel. In many cases, it is frequently the duty of the insurer to identify whether its reservation creates a conflict of interest, and to inform its insured of the conflict and/or the insured's right to independent counsel. Depending upon the jurisdiction, failing to take appropriate action when issuing a reservation of rights letter can have significant negative consequences for the insurer.

Moreover, if the insurer makes the decision to issue a reservation of rights letter, the insurer must take care in drafting a letter that is tailored to the facts of the claim, and sets forth the specific bases upon which it is reserving rights. An overly-broad letter may create conflicts, or potential conflicts, where none need exist based on the facts of the claim. Similarly, a letter that cites policy provisions, definitions, or exclusions that are not applicable to the facts of the claim may give rise to claims against the insurer alleging improper claims handling practices. At the same time, a letter that does not cite relevant policy provisions that the insurer intends to rely upon as part of its reservation may also expose the insurer to liability, and leave the insured uninformed of potential conflicts.

Like the insured, it is in the insurer's best interest to investigate all of these issues as quickly as possible following receipt of a tendered suit. In many states, the insurer has obligations regarding the time for acknowledging and responding to an insured's tender. Although, like the insured, the insurer should view its coverage analysis as a topic to be revisited throughout the course of litigation, so that its coverage position, and any reservation of rights, remains consistent with facts revealed during the litigation. Just as the insured may identify new sources of potential coverage during suit, an insurer may learn facts either giving rise to additional bases for reserving rights or withdrawing coverage, or facts that make it clear that the insurer will be clearly obligated to indemnify the insured for any settlement or judgment. The insurer should also be cognizant of facts and circumstances that may allow it to seek contribution from other parties or insurance carriers, or parties to whom it may tender its insured's claim. In complex coverage cases, it may be prudent for the insurer to retain coverage counsel to monitor the underlying litigation because, as we will discuss further, insurer-retained defense counsel will likely be unable to provide such analysis where it conflicts with defense counsel's duties to the insured defendant.

© 2011 Kopon Airdo, LLC

Three's Company or Three's a Crowd?: Appointment of Defense Counsel

The appointment of defense counsel by the insurer to represent the insured adds the third and final party to the tri-partite relationship, and creates a new set of issues and considerations for all three parties: the insured, the insurer, and the defense counsel.

For many insureds, the appointment of defense counsel by their insurer can seem like a time to relax and turn the case over to its newly appointed counsel. While this may be true in some cases, for instance, if there is no reservation of rights and the policy limits will cover the full extent of the damages in the case, most insureds should not blindly or unquestioningly hand off the case to insurer-retained counsel. First, the insured must take care in examining any reservation of rights letters that it receives from its insurer to determine, itself, whether the reservation gives rise to a conflict with its carrier. The insured should be particularly cognizant of claims where the insurer states that it has coverage for only some of the allegations made against it, and understand the impact such reservations may have if the case proceeds to judgment. For instance, if the claims against the insured involve allegations of both intentional conduct and negligent conduct, the insurer may have a duty to defend the insured against all claims, but only provide indemnity coverage for liability arising from the negligence claim. Thus, the insured, itself, will be liable if judgment is entered only on the intentional claims. Similarly, an insured should make note of reservations based on policy limits, particularly if the limit of coverage is low, or the plaintiff's claimed damages exceed that limit. In addition, insureds must pay special attention to reservations involving claims for punitive damages. The types of reservations that commonly give rise to conflicts also vary by jurisdiction.

After examining the insurer's reservation, the insured will need to decide whether it wishes to retain its own independent counsel to associate in its defense. If the insurer's coverage position creates a conflict between the insurer and the insured, the insured may, depending upon the jurisdiction, have the right to select independent counsel to handle its defense. Alternatively, if the insured does not have a right to independent counsel, it may decide to retain counsel at its own expense to either associate in, or monitor, the insurer's defense of the case. The insured may not have a right to control the defense, but if the case is significant to the insured's business or reputation, or if the insured sees a potential for future conflict between itself and its insurer, it may wish to have its own counsel available to advise it as to the status of the litigation, the insurer's handling of the case, and other issues that may allow the insured to assume control of its own defense from the insurer.

Similarly, the insurer must take care in communicating with its insured regarding the appointment of insurer-retained defense counsel. First, as discussed above, if the insurer has issued a reservation of rights, it must consider whether, in its jurisdiction, the reservation triggers a right to independent counsel for the insured. In addition, the insurer must consider whether its jurisdiction requires that it inform the insured of any conflicts or right to independent counsel. In the event that the insured elects to accept the defense provided by insurer-retained counsel, the

© 2011 Kopon Airdo, LLC

insurer may wish to have the insured acknowledge that it has waived any rights that it has to independent counsel based on informed consent.

Defense counsel, too, must identify his or her responsibility to both the insurer who has hired the attorney, and to the insured that it has been retained to represent. Again, the obligations of insurer-retained defense counsel vary widely depending upon jurisdiction. At the outset of the appointment, defense attorneys must have an understanding of whether their client is the insured, the insurer, or both, under the laws of the relevant jurisdiction, and the duties that they have to each.

In many cases, the insurer-retained defense counsel often becomes the intermediary for communication between the insurer and the insured. Defense counsel should make an effort early on in the litigation to understand both the insurer and the insured's position on the underlying litigation, potential areas where conflict may arise, and the expectations of the insured and the insurer as to the handling of the defense. For instance, in jurisdictions where the insurer has the right to control the insured's defense, defense counsel may need to educate the insured on that issue. At the same time, defense counsel may have a duty and obligation to keep the insured apprised of the status of litigation and to include the insured in its reports to the insurer. Depending upon the nature of the case, defense counsel may need to meet with the insured as part of the investigation or to complete discovery. In order to effectively represent the interests of both the insurer and the insured, it is important for defense counsel to establish strong working relationships with both parties.

Finally, defense attorneys should educate themselves as to the rules of professional conduct in his or her jurisdiction regarding conflicts, and must be mindful of potential conflicts that may arising during the litigation that could require the insurer-retained defense counsel to withdraw from the case. For example, defense counsel may learn information during the course of litigation that, if communicated to the insurer, would jeopardize or void the insured's coverage. Similarly, defense counsel may be faced with an insured defendant who refuses to cooperate in its own defense, leading to a situation where the insurer seeks to deny coverage due to lack of cooperation. In those circumstances, defense counsel's own efforts to involve the insured in its defense could become a fact relevant to a subsequent coverage dispute. With respect to policy limits, defense counsel may receive a settlement demand from a plaintiff the exceeds the insured's policy limit, or counsel may evaluate the case as having a value in excess of policy limits. Defense counsel should take care in investigating whether those circumstances give rise to a conflict between the insurer and insured in the relevant jurisdiction, and whether defense counsel has a duty to inform either party of that conflict. In still other cases, defense counsel may be put in a position where it receives conflicting directions from the insured and the insurer as to how defense of the case should be handled. Defense lawyers will need to determine, based on the law of the relevant jurisdiction, what their duties are and from whom they must take direction.

Resolving the Case

Even if the insurer, the insured, and defense counsel have managed to smoothly manage their tripartite relationship through the process of tender, appointment of defense counsel, and

© 2011 Kopon Airdo, LLC

defense of the case, the conclusion of the litigation process, either through settlement or trial, can often present new issues and points of conflict that may need to be negotiated. Again, all three parties to the relationship have distinct perspectives that must be considered.

For an insured, allowing an insurer to control whether to settle the case or take the risks presented by trial is a straightforward decision, particularly if it is clear that the entire settlement or judgment will be covered and paid by the insurer. For many insureds, however, the decision is not so simple. The insured may have a strong desire to settle the case, knowing that it cannot risk the damage to its business or reputation of a judgment against it, even if that judgment is paid entirely by the insurer. For other insureds, particularly those facing the risk of an uncovered judgment or verdict in excess of covered policy limits, settlement within the coverage limit is the only acceptable outcome. For those insureds, an insurer's refusal to settle the case for the plaintiff's demand presents significant problems and concerns. In those instances, the insured must determine whether, under the laws of the relevant jurisdiction, it has the right or ability to settle the case on its own without jeopardizing its right to indemnification from the insurer for the settlement value.

Other insureds, however, may refuse to consider settlement. The insured may view the claims made against it as frivolous or unfounded, and see any settlement as an admission of weakness or guilt. Some insureds may have concerns about reporting settlements over a particular amount to professional licensing regulators or similar organizations, even if the settlement is covered. In those instances, the insured will need to consider whether, under the language of its policy and the laws of the relevant jurisdiction, it has any right to refuse to consent to settlement where the insurer intends to settle the case.

Insurers concerns for settlement often mirror those of the insured, in the sense that the insurer must determine its rights and duties if the insured disagrees with the insurer's settlement position. The insurer, however, has additional considerations, even if it agrees with the insured as to whether the case should be tried or settled. For example, in some jurisdictions, the insurer has an obligation to settle a case within policy limits, if it has an opportunity to do so. In a case with damages near the value of the policy limit, the insurer's decision to pay a policy limits demand may be easy. However, in cases where the value of the plaintiff's damages are below the policy limits, but the plaintiff refuses to settle for anything less that the full limit of coverage, or something close to it, the insurer has a quandary. It must determine whether it has a duty to pay the plaintiff's demand, or allow the case to go to trial, possibly against the wishes of its insured. This problem can be more difficult to negotiate in cases where there is a possibility, however slight, that the plaintiff could be awarded damages in excess of the policy limits. In those situations, the insurer may risk being held liable for the full judgment awarded, even in excess of its limits, if it could have settled within its coverage limit, but the carrier refused to do so.

For defense counsel, settlement negotiations present additional opportunities for insured/insurer conflict, and instances where defense counsel must determine which party he or she is obligated to take direction from. Defense counsel also faces issues in advising both the insurer and insured during settlement negotiations, particularly where they may have divergent interests or opinions regarding settlement. In cases where known conflicts exist between the

© 2011 Kopon Airdo, LLC

insured and the insurer, settlement negotiations may bring to the forefront complex issues relating to policy exclusions and coverage limitations. The insurer and insured may need to negotiate directly with one another as to how settlement will be apportioned as between covered and uncovered claims, or other similar issues. In such cases, defense counsel must take care to satisfy its duties to both the insurer and the insured without compromising is obligations to either one.

Conclusion

As this discussion demonstrates, the tripartite relationship between the insurer, insured, and insurer-retained defense counsel can be rife with complex issues and conflicts presented by all stages of litigation. The rights and obligations of all three parties can also vary widely by jurisdiction. Yet, through careful consideration, investigation, and negotiation, the tripartite relationship can be used to achieve a result that is satisfactory to all three parties. The key to success is for all three parties to understand each other's respective rights and duties under the law of the relevant jurisdiction, and to engage in clear and direct communication at all stages of litigation with the other parties to the relationship.

© 2011 Kopon Airdo, LLC

Appendix

The following cases discuss the rights of insurers and insureds, and the tri-partite relationship between insurers, insureds, and insurer-retained defense counsel, in each jurisdiction.

Alabama

Twin City Fire Ins. Co. v. Colonial Life & Accident Ins. Co., 839 So.2d 614 (Ala. 2002).

Shelby Steel Fabricators, Inc. v. United States Fidelity & Guar, Ins. Co., 569 So.2d 309 (Ala. 1990).

L&S Roofing Supply Co. v. Paul Fire & Marine Ins. Co., 521 So.2d 1298, 1304 (Ala. 1987).

Alaska

Alaska Stat. § 21.89.100 (West 2010).

Great Divide Ins. Co. v. Carpenter, 79 P.3d 599, 604 (Alaska 2003).

Lloyd's & London Underwriting Co. v. Fulton, 2 P.3d 1199, 1203 (Alaska 2000).

CHI of Alaska, Inc. v. Employers Reinsurance Corp., 844 P.2d 1113, 1115 (Alaska 1993).

Cont'l Ins. Co. v. Bayless & Roberts, Inc., 608 P.2d 281, 289 (Alaska 1980).

Nat'l Indem. Co. V. Flesher, 469 P.2d 360, 367-68 & n.22 (Alaska 1979).

Arizona

USAA v. Morris, 741 P.2d 246 (Ariz. 1987).

Joseph v. Markovitz, 27 Ariz. App. 122, 127-128, 551 P.2d 571, 576-577 (Ariz. Ct. App. 1976).

Arkansas

Union Ins. Co. v. The Knife Co., 902 F. Supp. 877-880-81 (W.D. Ark. 1995).

First Am. Carriers, Inc. v. Kroger Co., 787 S.W.2d 669, 671 (Ark. 1990).

Northland Ins. Co. v. Heck's Serv. Co., 620 F. Supp. 107, 108 (E.D. Ark. 1986).

© 2011 Kopon Airdo, LLC

Am. Underwriters Ins. Co. v. Shook, 449 S.W. 402, 403 (Ark. 1970).

California

Cal. Civ. Code § 2860 (West 2010).

Gafcon, Inc. v. Ponsor & Assoc., 98 Cal. App. 4th 1388, 1406-07 (Cal.Ct.App. 2002).

James 3 Corp. v. Truck Ins. Exch., 111 Cal. Rptr. 2d 181, 186 (Cal.Ct.App. 2001).

San Gabriel Valley Water Co. v. Hartford Accident and Indem. Co., 82 Cal. App. 4th 1230, 1234, 98 Cal. Rptr.2d 807,809 (Cal.Ct.App. 2000).

PPG Indus., Inc. v. Transamerica Ins. Co., 975 P.2d 652 (Cal. 1999).

State Farm Mut. Auto. Ins. Co. v. Fed. Ins. Co., 86 Cal. Rptr. 2d 20, 22 (Ct. App. 1999).

Unigard Ins. Group v. O'Flaherty & Belgum, 45 Cal. Rptr. 2d 565, 568 (Ct. App. 1995).

San Diego Navy Fed. Credit Union v. Cumis Ins. Society, *Inc.*, 208 Cal. Rptr. 494, 506 (Ct. App. 1984).

Am. Mut. Liab. Ins. Co. v. Superior Court for Sacrament County, 38 Cal. App. 3d 579, 591-92 (1974).

Colorado

Essex Ins. Co. v. Tyler, 306 F. Supp. 2d 1270 (D. Colo. 2004).

Glover v. Southard, 894 P.2d 21, 23 (Colo. Ct. App. 1994).

Connecticut

Higgins v. Karp, 687 A.2d 539, 543 (Conn. 1997).

Aetna Life & Cas. Co. v. Gentile, 1995 WL 779102 (Conn.Super.Ct., Dec 12, 1995).

Continental Cas. Co. v. Pullman, Comely, Bradley & Reeves, 929 F.2d 103, 108 (2d Cir. 1991).

Delaware

Shephard v. Reinvehl, 2000 Del. Super. Lexis 242, *6 (Del.Super.Ct., March 29, 2000).

Int'l Underwriters, Inc. v. Stevenson Enterprises, Inc., 1983 Del. Super. Lexis 649, *7 (Oct. 4, 1983).

© 2011 Kopon Airdo, LLC

District of Columbia

Athridge v. Aetna Cas. & Surety Co., 163 F.Supp.2d 38 (D.D.C. 2001).

Florida

Fla. Stat. Ann. § 627.426 (West 2010).

General Security Ins. Co. v. Barrentine, 829 So.2d 980, 983 (Fl.Ct.App. 2002).

American Empire Surplus Lins Ins. Co. v. Gold Coast Elevator, 701 So.2d 904, 906 (Fla.Dist.Ct.App. 1997).

Nationwide Mut. Fire Ins. Co. v. Beville, 825 So. 2d 999, 1002 (Flaherty. App. 2002), rev. denied (Flaherty, 2003).

Georgia

Util. Serv. Co., Inc. v. St. Paul Travelers Ins. Co., 2007 U.S. Dist LEXIS 4634 (M.D. Ga. January 22, 2007).

Am. Family Life Assur. Co. v. U.S. Fire Co., 885 F.2d 826, 831-32 (11th Cir. 1989).

Davis v. Cincinnati Ins. Co., 288 S.e.2d 233 (Ga. App. 1982).

Hawaii

CIM Ins. Corp. v. Masamitsu, 74 F.Supp.2d 975, 992 (D. Haw. 1999).

Finley v. Home Ins. Co., 90 Haw. 25, 975 P.2d 1145 (1998).

First Ins. Co. of Hawaii, Inc. v. State, by Minami, 665 P.2d 648, 654 (Haw. 1983).

Idaho

Abbie Uriguen Oldsmobile Buick, Inc. v. US Fire Ins. Co., 511 P.2d 783, 789-90 (Idaho 1973).

Boise Motor Car Co. v. St. Paul Mercury Indem. Co., 112 P.2d 1011, 1016 (Idaho 1941).

Illinois

R.C. Wegman Construction Co. v. Admiral Insurance Co., 629 F.3d 724, 728 (7th Cir. 2011).

West American Insurance Co. v. Yorkville, 939 N.E.2d 288 (Ill. 2010).

© 2011 Kopon Airdo, LLC

Nat'l Cas. Co. v. Forge Indus. Staffing, Inc., 567 f.3d 871 (7th Cir. 2009).

Stoneridge Dev. Co. v. Essex Ins. Co., 382 Ill. App. 3d 295 (1st Dist. 2009).

Am. Fam. Mut. Ins. Co. v. W.H. McNaughton Builders, Inc., 363 Ill.App.3d 505, 510 (Ill.App.Ct. 2006).

Utica Mut. Ins. Co. v. The David Agency Ins., Inc., 327 F.Supp.2d 922, 930 (N.D. Ill. 2004).

Employers Ins. V. Ehlco Liquidating Trust, 186 Ill.2d 127, 156 (1999).

Ins. Co. of Ill. V. Fed. Kemper Ins. Co., 683 N.E.2d 947 (Ill. App. Ct. 1997).

Ins. Co. of Pa. v. Protective Ins. Co., 592 N.E.2d 117 (Ill.App.Ct. 1992).

Royal Ins. Co. v. Process Design Associates, Inc., 221 Ill. App. 2d 966, 976 (2nd Dist. 1991).

Allstate Ins. Co. v. Carioto, 194 Ill. App. 3d 767 (1st Dist. 1990).

Illinois Masonic Med. Center v. Turegum Ins. Co., 522 N.E.2d 611, 613 (Ill.App.Ct. 1988).

Nandorf, Inc. v. CNA Ins. Co., 134 Ill. App. 3d 134 (1st Dist. 1985).

Thornton v. Paul, 384 N.E.2d 335, 343 (1979).

Maryland Cas. Co. v. Peppers, 64 Ill.2d 187, 355 N.E.2d 24, 30 (Ill. 1976).

Indiana

Armstrong Cleaners, Inc. v. Erie Ins. Exchange, 364 F.Supp.2d 797 (S.D. Ind. 2005).

All Starts Ins. Corp. v. Steel Bar, Inc., 324 F. Supp. 160, 164 (N.D. Ind. 1971).

Gallant Ins. Co. v. Wilkerson, 720 N.E.2d 1223, 1227 (Ind.Ct. App. 1999).

Snodgrass v. Baize, 405 N.E.2d 48, 51 (Ind. Ct. App. 1980).

Iowa

First Newton Nat'l Bank v. General Cas Co. of Wis., 426 N.W.2d 618 (Iowa 1988).

Kooyman v. Farm Bureau Mut. Ins. Co., 315 N.W.2d 30 (Iowa 1982).

© 2011 Kopon Airdo, LLC

Kansas

United States v. Daniels, 163 F. @upp. 2d 1288, 1290 (D. Kan. 2001).

Dyer v. Holland, 1996 U.S. Dist. LEXUS 210008 at *11 – 12 (Kan. 1997).

State Farm Fire & Cas. Co. v. Finney, 244 Kan. 545, 553, 770 P.2d 460, 466 (Kan. 1989).

Patrons Mut. Ins. Ass'n v. Harmon, 240 Kan. 707, 711, 732 P.2d 741, 745 (Kan. 1987).

Bell v. Tilton, 674 P.2d 468 (Kan. 1983).

Kentucky

Cincinnati Ins. Co. v. Vance, 730 S.W.2d 521, 524 (Ky. 1987).

Medical Protective Co. v. Davis, 581 S.W.2d 25 (Ky. Ct. App. 1979).

O'Bryan v. Liebson, 446 S.W.2d 643 (Ky.Ct.App. 1969).

Louisiana

Smith v. Reliance Ins. Co., 807 So. 2d 1010, 1022 (La. Ct. App. 2002).

Belanger v. Gabriel Chem. Inc., 787 So.2d 559 (La. Ct. App. 2001).

Vargas v. Daniel Battery Mfg. Co., Inc., 648 So.2d 1103 (La. Ct. App. 1995).

Maine

Patrons Oxford Ins. Co. v. Harris, 2006 ME 72 (Sup. Ct. Maine June 16, 2006).

Travelers Ins. Co. v. Dingwell, 414 A.2d 220 (Me. 1980)(dicta).

Maryland

The Driggs Corp. v. Pa Mfrs' Ass'n Ins. Co., 1999 U.S. App. LEXIS 9182 at *16 (4th Cir. 1999)(applying Maryland law).

Roussos v. Allstate Ins. Co., 655 A.2d 40 (Md. Ct. Spec. App. 1995).

Allstate Ins. Co. v. Campbell, 639 A.2d 652 (Md. 1994).

Brohawn v. Transamerica Ins. Co., 347 A.2d 842 (Md. 1975).

© 2011 Kopon Airdo, LLC

Massachusetts

Hartford Cas. Ins. Co. v. A & M Assocs., Ltd., 200 F.Supp.2d 84, 90 (D. R.I. 2002)(Mass. Law).

Three Sons Inc. v. Phoenix Ins. Co., 257 N.E.2d 774, 776-77 (Mass. 1970).

Magoun v. Liberty Mut. Ins. Co., 346 Mass. 677, 682, 195 N.E.2d 514, 517 (Mass. 1964).

Michigan

Central Mich. Bd. of Trustees v. Employers Reinsurance Corp., 117 F.Supp.2d 627, 635 (E.D. Mich. 2000).

Atl. Int'l Ins. Co. v. Bell, 475 N.W.2d 294, 295-96 (Mich. 1991).

Federal Ins. Co. v. X-Rite, Inc., 748 F.Supp.1223 (W.D. Mich. 1990).

Minnesota

Brown v. Nat'l Union Ins., 2003 U.S. Dist. LEXIS 15933 at *11 (Minn. 2003).

Pine Island Farmers Coop v. Erstad & Riemer P.A., 649 N.W.2d 444, 452 (Minn. 2002).

Mutual Serv. Cas. Inc. Co. v. Luetmer, 474 N.W.2d 365, 369 (Minn.App.Ct. 1991).

Prahm v. Rupp Constr. Co., 277 N.W.2d 389, 391 (Minn. 1979).

Mississippi

Twin City Fire Ins. Co. v. Madison, 309 F.3d 901, 907 (5th Cir. 2002).

Am. Guarantee & Liab. Ins. v. 1906 Co., 273 F.3d 605, 621 (5th Cir. 2001).

Moeller v. American Guar. & Liab. Inc. Co., 707 So.2d 1062 (Miss. 1996).

Hartford Accident & Indem. Co. v. Foster, 528 So.2d 255 (Miss. 1988).

Missouri

United Fire & Cas. Co. v. Gravett, 182 F.3d 649, 657 (8th Cir. 1999).

State Farm Mut. Auto. Ins. Co. v. Ballmer, 899 S.W.2d 523, 577 (Mo. 1995).

Butters v. Independence, 513 S.W.2d 418, 424-25 (Mo. 1974).

© 2011 Kopon Airdo, LLC

Montana

Safeco Ins. Co. of Am. V. Liss, 2005 ML 932 (Mo. App. Ct. 2005).

In re Rules of Prof'l Conduct, 2 P.3d 806, 814 (Mont. 2000).

St. Paul Fire & Marine Ins. Co. v. Thompson, 433 P.2d 795, 799 (Mont. 1967).

Nebraska

Nat'l Am. Ins. Co. v. W & G, Inc., 2005 U.S. Dist. LEXIS 4264 at *5 (Neb. 2005).

First United Bk. of Bellevue v. First American Title Ins. Co., 242 Neb. 640, 496 N.W.2d 474 (1993).

Nevada

Crystal Bay Gen. Improvement v. Aetna, 1992 U.S.App. Lexis 6496 (1992)(unpublished).

Crystal Bay Gen. Improvement v. Aetna, 713 F.Supp. 1371 (D. Nev. 1989).

New Hampshire

White Mountain Constr. Co. v. Transamerica Ins. Co., 137 N.H. 478, 487, 631 A.2d 907, 913 (N.H. 1993).

Gelinas v. Metro. Prrop. & Liab. Ins., 551 A.2d 962, 966 (N.H. 1988).

Douglas v. United States Fid. & Guar. Co., 127 A. 708 (N.H. 1924).

New Jersey

Trustees of Princeton Univ. v. Aetna Cas. & Sur. Co., 293 N.J.Super. 296, 680 A.2d 783, 788 (N.J. Super. Ct. App. Div. 1996).

Morrone v. Harleysville Mut. Ins. Co., 283 N.J.Super. 411, 662 A.2d 562, 567 (N.J. Super. Ct. App. Div. 1995).

Lieberman v. Employers Ins. of Wausau, 419 A.2d 417, 424 (N.J. 1980).

Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 323 A.2d 495 (N.J. 1974).

Burd v. Sussex Mut. Ins. Co., 267 A.2d 7, 10 (N.J. 1970).

© 2011 Kopon Airdo, LLC

New Mexico

American Employers Ins. Co. v. Crawford, 87 N.M. 375, 380-81, 533 P.2d 1203, 1208-09 (N.M. 1975).

New York

Coregis Ins. Co. v. Lewis, Johs, Avallone, Aviles and Kaufman, 2006 U.S. Dist. LEXIS 55326 at *45 (N.Y. App. Ct. 2006).

Emons Indus. Inc. v. Liberty Mut. Ins. Co., 749 F.Supp. 1289, 1296-97 (S.D.N.Y. 1990).

Klein v. Salama, 545 F.Supp. 175, 179 (E.D.N.Y. 1982).

Public Serv. Mut. Ins. Co. v. Goldfarb, 425 N.E.2d 810, 815 (N.Y. 1981).

Utica Mut. Ins. Co. v. Cherry, 358 N.Y.S.2d 519, 524 (App. Div. 1974).

North Carolina

Connor v. State Farm Mut. Auto Ins. Co., 143 S.E.2d 98 (N.C. 1965).

North Dakota

Fetch v. Quam, 530 N.W.2d 337, 340 (N.D. 1995).

Ohio

Red Head Brass, Inc. v. Buckeye Union Ins. Co. 135 Ohio.App.3d 616, 735 N.E.2d 48 (1999).

Lusk v. Imperial Cas. & Indem. Co., 78 Ohio App.3d 11, 603 N.E.2d 420 (Ct. App. 1992).

State Farm Fire & Cas. Co. v. Pildner, 321 N.E.2d 600 (Ohio 1974).

Socony-Vacuum Oil Co. v. Cont'l Cas. Co., 144 Ohio St. 382, 59 N.E.2d 199 (1945).

Oklahoma

Nisson v. American Home Assurance Co., 1996 Ok.Civ.App. 40, 917 P.2d 488 (1996).

Oregon

Two Bears Co. v. State Ins. Co. v. Am. State Ins. Co., 185 F.3d 869 (9th Cir. 1999).

© 2011 Kopon Airdo, LLC

Ferguson v. Birmingham Fire Ins. Co., 254 Or. 496, 460 P.2d 342 (Or. 1969).

Pennsylvania

Bedwell Co. v. D.Allen Bros., 2006 Phila. Ct. Com. Pl. LEXIS 459 at *7-8 (Penn. 2006).

Gov't Employees Ins. Co. v. Forbes, No. CIV A. 99-891, 1999 WL 371625 (E.D. June 2, 1999).

Krueger Assocs., Inc. v. ADT Sec. Sys., Inc., NO. 93-1040, 1994 U.S. Dist. LEXIS 18168, at 17 (E.D. Pa. Dec. 20, 1994).

Consol. Rail. Corp. v. Hartford Accident & Indem. Co., 676 F.Supp. 82, 86 (E.D. Pa. 1987).

Pennbank v. St. Paul Fire & Marine Ins. Co., 669 F.Supp. 122, 126-7 (W.D. Pa. 1987).

Point Pleasant Canoe Rental, Inc. v. Tinicum Township, 110 F.R.D. 166, 170 (E.D. Pa. 1986).

Rhode Island

Labonte v. Nat. Brange Mut. Ins. Co., 810 A.2d 250, 254 (R.I. 2002).

Employers Fire Ins. Co. v. Beals, 103 R.I. 623, 633, 240 A.2d 397, 403 (R.I. 1968).

South Carolina

Twin City Fire Ins. Co. v. Ben Arnold-Sunbelt Bev. Co. of S.C., 433 F.3d 365, 374 (4th Cir. 2005).

South Dakota

St. Paul Fire & Marine Ins. Co. v. Engelmann, 639 N.W.2d 192 (S.D. 2000).

State Farm Mut. Auto. Ins. Co. v. Armstrong Extinguisher Serv., 791 F.Supp. 799, 801 (W.D. S.D. 1992).

Kansas Bankers Surety Co. v. Lynass, 920 F.2d 546, 549 (8th Cir. 1990).

Tennessee

Tyson v. Equity Title & Escrow Co. of Memphis, 282 F.Supp. 2d 829, 831 (W.D. Tenn. 2003).

© 2011 Kopon Airdo, LLC

Givens v. Milikin ex rel. Estate of McElwaney, 75 S.W.3d 383, 396 (Tenn. 2002).

Texas

Unauthorized Practice of Law Committee v. American Home Assurance Company, 261 S.W.3d 24 (Texas 2008).

Rx.Com. Inc. v. Hartford Fire Insurance Company, 426 F.Supp. 2d 546 (S.D. Tex. 2006).

Steel Erection Co. v. Travelers Indem. Co, 392 S.W.2d 713, 716 (Tex. Civ. App. 1965).

G.A. Stowers Furniture Co. v. Am. Indem. Co., 15 S.W.2d 544, 548 (Tex. Comm'n App. 1929).

Utah

Crist v. Ins. Co. of N. Am., 529 F.Supp. 601, 605 (C.D. Utah 1982).

United States Fidelity & Guar. Co. v. Louis a. Roser Co., 585 F.2d 932, 939-40 (8th Cir. 1978)(Utah Law).

Vermont

Myers v. Ambassador Ins. Co., 146 Vt. 552, 556 (1986).

Virginia

RMZ Corp. v. Assurance Co., 60 Va. Cir. 269, 277-78 (2002).

Town Crier, Inc. v. Hume, 721 F.Supp.99 (E.D.Va. 1999).

State Farm Auto Ins. Co. v. Floyd, 366 S.E.2d 93 (Va. 1988).

Norman v. Insurance Co. of N.A., 218 Va. 718, 727, 239 S.E.2d 902, 907 (Va. 1978).

Washington

Safeco Ins. Co. v. Butlr, 823 P.2d 499, 503 (Wash. 1992).

Johnson v. Continent Casualty Co., 57 WN.App. 359, 788 P.2d 598 (1990).

Tank v. State Farm Cas. Co., 105 Wash. 2d 281, 387-88, 715 P.2d 1133, 1137 (Wash. 1986).

Hamilton v. State Farm Ins. Co., 523 P.2d 193, 196 (Wash. 1974).

© 2011 Kopon Airdo, LLC

West Virginia

Jackson v. State Farm Mut. Auto. Ins. Co., 600 S.E.2d 346 (W.Va. 2004).

Barefield v. DPIC Companies, Inc., 600 S.E.2d 256 (W.Va. 2004).

Wisconsin

Radke v. Firemens Fund Ins. Co., 217 Wis. 2d 39, 557 N.W.2d 366 (1998).

Am. Motorists Ins. Co. v. Trane Co., 544 F.Supp. 669, 686 (W.D. Wis. 1983).

Jacob v. West Bend Mut. Ins. Co., 203 Wis. 2d 524, 553 N.W.2d 800 (1996).

Wyoming

Shoeshone First Bank v. Pacific Emplrs. Ins. Co., 2 P.3d 510, 2000 Wyo. LEXIS 67 (2000).

Ins. Co. of N. Am. V. Spangler, 881 F.Supp. 539, 544 (D. Wyo. 1995).

© 2011 Kopon Airdo, LLC

Sample Tender Letter

[insert date]

ABC Insurance
1919 Main Street
Big City, USA.

Re: *Plaintiff v. Smith University*
County Court No: C119999
Claim No.: AB-12345
Insured: Smith University
Date of Loss: 01/01/11

Dear Sir or Madam:

Please be advised that our office represents Smith University relative to the above-captioned matter. It is our understanding that your company had the General Liability Policy for Smith University, for the period 6/30/2010-6/30/2011, under Policy Number CGL 987654321,

A copy of Plaintiff's Complaint, which is currently pending State Court, is enclosed. As set forth in his Complaint, the Plaintiff alleges that he was suspended from Smith University after being found using a glass pipe in his dorm room on January 1, 2011. The Plaintiff claims, among other allegations, that he has been placed in a false-light by Smith University.

This correspondence is intended to serve as our tender of this matter for defense and indemnification on behalf of Smith University. Should you have any questions or concerns regarding this matter, please do not hesitate to contact me.

Very truly yours,

Curtis Counsel

cc: Smith University

© 2011 Kopon Airdo, LLC

Sample Reservation of Rights Letter

[insert date]

Mr. Sam Insured
Director of Operations
Smith University
10 Maple Street
Any Town, USA.

Re: *Plaintiff v. Smith University*
County Court No: C119999
Claim No.: AB-12345
Insured: Smith University
Date of Loss: 01/01/11

Dear Mr. Insured:

We are in receipt of your correspondence regarding the Complaint and Application for Temporary Restraining Order filed by John Plaintiff against Smith University ("Smith"). It is our understanding that you have tendered this matter to ABC Insurance Company ("ABC") for coverage on behalf of Smith. For the reasons discussed below, ABC will agree to defend this matter pursuant to this strict reservation of rights.

The Complaint tendered to ABC consists of four causes of action arising from Smith's act of suspending and placing John Plaitiff on probation following an incident that occurred on Smith's property on January 1, 2011. In the Complaint, the Plaintiff alleges that he and another student were found using a glass pipe in Plaintiff's on-campus dorm room, and that Smith officials presumed Plaintiff and the other student were attempting to smoke marijuana. The Plaintiff contends that the substance in the pipe was incense, and not an illegal substance. Because the substance was not a drug, the Plaintiff asserts that his actions were not in violation of Smith's Alcohol, Drug, and Tobacco Policy. The Plaintiff further alleges that, as a result of this incident, he was given a long-term suspension that excluded him from the campus for the remainder of the school year. The Plaintiff claims that Smith's actions were inconsistent with the terms of the Smith Student Handbook 2010-2011, including provisions entitled "Student Life Guidelines," "Code of Conduct," and "Dormitory Rules." According to the Complaint, Smith's decision to suspend Plaintiff exceeded the scope of consequences described in the Handbook for conduct like his.

In Count I of their Complaint, the Plaintiff assert that Smith's actions constitute a breach of contract, with the Smith Student Handbook forming a part of their contract with Salpointe. In Count II, the Plaintiff alleges that Smith has breached the covenant of good faith and fair dealing by punishing him when his actions were not in violation of Smith's Alcohol, Drug, and Tobacco policy, or any other provisions of the Handbook. Count III is based on the tort theory of "false light." The Plaintiff asserts that, by excluding him from campus events, Smith has placed him before the public in a light that indicates a gross failure to comply with provisions of the

© 2011 Kopon Airdo, LLC

Handbook, when he has, at most, only committed minor violations. The Plaintiff contends that Smith has knowledge that the light in which it has presented him is false. Finally, in Count IV, the Plaintiff seeks declaratory/equitable relief to allow him to return to the Smith campus. As damages, the Plaintiff seeks an order from the Court directing Smith to allow him to return immediately to campus. The Plaintiff also seeks damages in an amount equal to the value of the contract that has been breached, attorneys fees of at least $5,500.00, and any other relief the Court deems just.

As you are aware, ABC Insurance Company previously issued a policy of insurance to Smith for the Policy Period 6/30/2010-6/30/2011, with policy number CGL 98765432. The Ploicy, which governs coverage in this matter provides, in relevant part, as follows:

Section II – Losses We Cover

Coverage A – Comprehensive General Liability:

We will pay all sums for **bodily injury, personal injury**, or **property damage** to others for which the law holds **you** responsible because of an **occurrence**. This includes prejudgment interest awarded against **you**.

We will defend **you**, at **our** expense with counsel of **our** choice, against any suit or claim seeking these damages. **We** may investigate, negotiate, or settle any suit or claim.

We are not obligated to pay any claim or judgment or defend any suit if **we** have already exhausted the limit of liability set forth in the Declarations by paying judgments or settlements.

***

General Liability Definitions

Bodily Injury means any bodily harm, sickness or disease. This term includes required care, loss of services and death if it is a result of such bodily harm, sickness or disease.

Occurrence means an accident, including continuous or repeated exposure to substantially the same general harmful conditions, resulting in **bodily injury**, **personal injury,** or **property damage** during the term of the policy.

Personal Injury means mental injury, mental anguish, shock, sickness, disease, disability, and death, **except** when these arise from or are associated with Bodily Injury. Personal Injury also means false arrest, false imprisonment, corporal punishment (*unless this conduct is prohibited by law*), wrongful eviction, wrongful detentions, malicious prosecution, erroneous service of civil papers; Wrongful cemetery practices; Piracy, infringement or misappropriation of any

© 2011 Kopon Airdo, LLC

intellectual property rights (*including copyrights; patents; trademarks; trade dress; service marks; and advertising, broadcasting and publishing ideas*); Invasion of right of privacy, disparagement of a person's or organization's goods, products or services or property; libel, slander, or defamation of character; humiliation, discrimination, or violation of civil right *(except for any of the foregoing alleged in connection with a claim that is covered on a claims-made basis for the Benefit Plan).*

Property Damage means physical damage to or destruction of tangible property, including loss of use of this property.

<u>General Liability Coverage Exclusions</u>

This Benefit Schedule does not apply:

***

B. Bodily Injury, Property Damage, or Personal Injury which the Beneficiary intended or expected; unless arising from:

1. An act alleged to be assault and battery for the purposes of preventing injury to persons or damage to property; or

2. Corporal punishment (unless this conduct is prohibited by law).

***

W. Claims, demands, or actions seeking relief or redress in any form other than monetary damages, or any fees, costs, or expenses, which the Beneficiary may be obligated to pay as a result of any adverse judgment for declaratory relief or injunctive relief.

***

DD. Any Claim arising out of an intentional breach of contracts, including, but not limited to, employment contracts, salary, back wages or salary differential or benefits arising from the breach.

Given the above referenced provisions, ABC's coverage does not apply to Counts I and II of the Plaintiff's Complaint, as claims for breach of contract are excluded by Exclusion DD. Similarly, ABC's coverage also does not apply to Count IV of the Plaintiff's Complaint, or their request for declaratory or equitable relief, as these claims seek non-monetary damages that are excluded from the Trust's coverage by Exclusion W.

With regard to Count III, the Plaintiff alleges that Smith has acted with knowledge that it has placed the Plaintiff in a false light. As a result, Smith's actions may not constitute an "occurrence," in that the Plaintiff's injury cannot said to have been unexpected or unintended by Smith. For the same reason, coverage may be excluded by Exclusion B. Thus, to the extend

© 2011 Kopon Airdo, LLC

Smith may have intended or expect that its actions would place Smith in a "false light," there would be no coverage under ABC's Policy for Count III of the Plaintiff's Complaint.

ABC will appoint counsel to defend Smith in this matter, pursuant to this strict reservation of rights. This reservation of rights means that, while ABC Insurance is paying for an attorney to provide you with a defense at this time, ABC Insurance may not be obligated to pay any judgment or settlement in connection with the Plaintiff's lawsuit, and may withdraw from providing you with a defense, if it is determined that there is no duty to defend these claims.

ABC has retained the Law Offices of Albert Attorney to defend Smith. We request that Smith work with Mr. Attorney in its defense. ABC recognizes that this reservation of rights may create a conflict in Mr. Attorney's representation of Smith in the Plaintiff's suit. Should Smith wish to retain independent counsel to represent its interests, please contact me at your earliest convenience to discuss.

The foregoing analysis is not necessarily intended as an exhaustive recital of each and every basis that exists in the applicable Policy to deny coverage. ABC expressly reserves its right to assert any and all bases found in the applicable Policy to deny coverage with respect to this matter.

Should you have any questions or concerns regarding this matter, please do not hesitate to contact me.

Very truly yours,

Annie Adjuster

© 2011 Kopon Airdo, LLC