

The Tripartite Relationship in Insurance: Ethical Dilemmas and Coverage Complexities Strategies to Navigate the Conflicts of Interest Minefield

A Live 90-Minute Teleconference Program with Interactive Q&A

Thursday, August 14, 2008

1:00 p.m. Eastern Time / 12:00 p.m. Central Time /
11:00 a.m. Mountain Time / 10:00 a.m. Pacific Time

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The tripartite relationship and the ethical concerns that follow are of top concern to insurance counsel. The parties of the tripartite relationship are in a unique situation that requires them to tread carefully. Failure to do so can prove costly.

Counsel retained by an insurance company to represent a policyholder faces the dual client dilemma, which raises many difficult issues. While the interests of the policyholder and insurer are similar, there are no problems. However, when these interests are not aligned, conflicts of interest arise and coverage may be impacted.

This teleconference will examine the conflicts of interest and ethical problems faced by the three parties, the coverage implications of the tripartite relationship, how the courts and state bars address the issues, and strategies for navigating the minefield of potential conflicts of interest.

- I. Conflicts of interest
 - A. Reservation of rights
 - B. Claimed damages exceed coverage
 - C. Representation of multiple parties
 - D. Defense costs reduce available coverage
 - E. Punitive damages
 - F. Insurer tries to reduce expense by limiting discovery
 - G. Disclosures to the insurer
 - H. Policyholder's failure to cooperate
 - I. Control of settlement

- II. Coverage implications
 - A. Managed litigation practices/procedures
 - B. Use of defenses — only token defense?
 - C. Steering result to judgment under an uninsured theory of recovery
 - D. Later use of confidential information by insurer to its advantage
 - E. Settlement
 - 1. Of claim in excess of limits
 - 2. When policyholder instructs counsel not to settle
 - 3. Voluntary dismissal when there is a pending cross- or counter-claim

- III. Ethical rules and the state of the law
 - A. Ethical rules
 - 1. Model rule 1.7
 - 2. Model rule 1.8(f)
 - 3. Model rule 5.4(c)
 - 4. Model rule 1.2
 - 5. Model rule 1.6
 - 6. Model rule 1.16
 - 7. State ethics rules
 - B. State statutes
 - 1. California – Cal. Civ. Code sect. 2860(b)
 - 2. Florida – Fla. St. Ann. sect. 627.426(2)
 - 3. Alaska – Alaska stat. sect. 21.89.100(c)
 - C. Court treatment
 - D. State bar associations
 - 1. Virginia – Opinion Nos. 598 (March 8, 1985), ABA-430 (July 9, 2003), 1789 (Feb. 20, 2004), and ABA-435 (Dec. 8, 2004)
 - 2. California – Formal Opinion Interim No. 96-0012
- IV. Strategies for navigating conflicts of interest
 - A. Engagement letter
 - B. Additional counsel at policyholder’s expense when claim or suit is in excess of limits
 - C. Inform policyholder/additional counsel of all settlement negotiations/pertinent information
 - D. Inform policyholder/additional counsel of counterclaims

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