

## **HYPOTHETICAL No. 1**

Policyholder is a roofing subcontractor. After completion of a building, owner sues the general contractor and the subcontractor, claiming that defects in the workmanship of the roof have caused the roof to deteriorate, resulting in leaks that damaged the floor below the roof and the contents of the building.

### **QUESTION NO. 1:**

Claims rep calls defense counsel and asks, "Hey, Joe, I don't think I have any coverage for this loss." Discuss defense counsel Joe's response to friendly claims rep. When and if, should Joe let managing attorney know about conversation?

#### **Talking Points:**

*Who is client?*

*What does claims rep want defense counsel to do?*

*Defend/coverage opinion.*

*Does defense counsel have enough information to discuss?*

### **QUESTION NO. 2:**

Assume friendly claims rep assigns case to Joe defense counsel to defend subcontractor without sending Joe the claims file. Joe reviews the Complaint and concludes that maybe there are uncovered counts. Should Joe, as counsel for subcontractor:

- a. Call claims rep and state, "Hey, claims rep, you should issue a reservation of rights letter", or
- b. Call claims rep and ask him, "Hey have you issued a reservation of rights letter on this case?, or
- c. Wait for file, determine whether reservation of rights letter is in the file and, if not, call claims rep and discuss 1 and 2 above, or
- d. Do nothing.

Please discuss the above options.

Discuss what, if anything, defense counsel should tell his client/insured about these coverage issues.

## **HYPOTHETICAL No. 2**

Policyholder's employee had an auto accident after leaving work for the day, but was carrying a package he intended to drop off at the post office for mailing to policyholder's customer. Plaintiff sues policyholder and employee alleging employee was in the course and scope of his employment at the time of the accident. If employee was in the course and scope of employment, employee is an insured under policyholder's policy with the insurance company.

### **QUESTION NO. 1:**

Defense counsel is asked to defend policyholder (employer company). Is there a coverage-related problem if course and scope is contested? Is there a coverage-related problem if course and scope is uncontested?

#### **Talking Points:**

### **QUESTION NO. 2:**

Assume claims asks defense counsel to represent both policyholder and employee.

- a. If course and scope of employee is uncontested, can defense counsel represent both policyholder (employer) and employee?

**Talking point:**

- b. If course and scope issue is contested, can defense counsel represent both employer and employee?

**Talking point:**

- c. If answer to b. is “no”, can defense counsel represent both employer and employee with a written waiver by both employer and employee?

**HYPOTHETICAL No. 3**

Plaintiff and Defendant are involved in an auto accident where Plaintiff sustains serious injuries. Plaintiff is treated extensively and makes a full recovery. Medical bills in the case approximate \$50,000. Defendant allegedly ran a red light. Defendant doesn't believe he ran the red light, but is distraught, hates litigation, wants this ordeal to end. Policy limits are \$300,000. You represent the Defendant; your client is difficult and has one prior DUI conviction. He was not intoxicated at the time of this accident.

**QUESTION NO. 1:**

After the completion of discovery, you believe your client may have exposure in excess of limits. You have received an initial demand of \$500,000. Outline the issues you should discuss with your client. How do you communicate your evaluation and your client's views to claims? Do you tell claims straight up this is a limits case? If so, how do you tell claims?

**QUESTION NO. 2**

Assume Plaintiff has now demanded policy limits. You continue to believe your client has potential exposure in excess of limits. You must communicate this new demand to claims.

- a. What role, if any, should personal counsel play in negotiations? If no personal counsel in case, should client be advised by you to seek personal representation? If client is so advised should claims be informed of that advice? What role would you have personal counsel play in the defense of the case and the negotiations?
- b. Defense counsel communicates \$300,000 limits demand to claims and claims says to defense counsel, “This case is not worth \$300,000. On Plaintiff's best day, he would only get \$250,000. Anyway, my exposure is capped at #300,000. What do you think my odds are in getting hit for bad faith, prejudgment interest, and the likelihood of an excess verdict?”

Discuss the following:

- i. Defense counsel's duty to relay to his client and/or his personal attorney, claims' remarks.
- ii. Should defense counsel even respond to claims' question about potential bad faith?
- iii. How should defense counsel respond to claims?
- c. On the eve of trial, negotiations break down. Claims wants to try case and your client wants to settle for limits. How should defense counsel proceed?