

COVERAGE QUESTIONNAIRE

USE NOTES:

This Coverage Questionnaire asks challenging questions to an insurer that has reserved its rights to deny coverage. It is also useful to solicit an express waiver of coverage defenses of an insurer that has apparently conceded full coverage.

The insurer is required by regulations to respond to this Questionnaire. “Upon receiving any communication from a [policyholder] that reasonably suggests that a response is expected, every [insurer] shall immediately, but in no event more than fifteen (15) calendar days after receipt of that communication, furnish the [policyholder] with a complete response based on the facts as then known by the [insurer].” (Cal. Code. Regs. § 2695.5(b) (ellipses omitted).)

Notwithstanding this requirement, some insurer may not respond at all or respond completely. The policyholder may complaint to this violation to the Consumer Communications Bureau, California Department of Insurance, 300 South Spring Street, South Tower Los Angeles, CA 90013, (800) 927-4357, whereupon the department of insurance should commence an investigation. The policyholder may also telephone the claim agent to read the questions, make notes of the responses, and send a confirming letter making an open record of the insurer’s responses. If the claim agent refuses to respond by telephone, the Questionnaire may be used as a deposition outline to get the requested information and to embarrass the insurer for its refusal to respond to inquiry, short of litigation.

Sending this Coverage Questionnaire, obtaining a satisfactory response, or confirming the insurer’s refusal to respond may be necessary prerequisites to filing suit. In one notable opinion, a court sustained without leave to amend a policyholder’s coverage complaint that lacked factual specific allegations. “We conclude the facts alleged by [the policyholder] do not support its claim of a conflict of interest with [the insurer]. . . . [The policyholder] argues . . . without giving any explanation about how [and] offers a host of allegations about how [the insurer] will control the litigation without describing how this is occurring. . . . [The policyholder] is alleging conclusions without substance, not facts. As Gertrude Stein famously said about Oakland, there is no there there.” (*Centex Homes v. St. Paul Fire & Marine Ins. Co.* (2015) 237 Cal.App.4th 23, 31-32.)

If the insurer has hired dependent counsel to control the policyholder’s defense, the policyholder may also send to dependent counsel an Ethical Compliance Questionnaire, with a copy sent to the insurer. While many dependent counsel may similarly resist responding to the questionnaire, the lawyers failure to respond may be ground to disqualify the lawyer as attorney of record.

COVERAGE QUESTIONNAIRE

A claimant has sued me, the policyholder. You, my insurer, have reserved your rights to deny coverage and hired “dependent counsel” to represent me. I have not given informed written consent to dependent counsel’s representation of me nor authorized dependent counsel to make an appearance in court. Please earn my trust by answering the following questions.

	YES	NO
Do you unconditionally waive all bases upon which you may deny coverage to me?	<input type="checkbox"/>	<input type="checkbox"/>
If the claimant obtains a judgment, will you pay compensatory damages even if punitive damages are also awarded?	<input type="checkbox"/>	<input type="checkbox"/>
Will you solicit from the claimant an offer to settle within my policy limit?	<input type="checkbox"/>	<input type="checkbox"/>

If you answered “yes” to all three questions, please promptly return this Questionnaire, and disregard the remaining questions. If you answered “no” to any question, please promptly complete and return the entire Questionnaire. Please furnish me with complete explanations to all of your responses based on the facts now known by you pursuant to Cal. Code Regs., including § 2695.5(b) and § 2695.7(b).

INSURER STANDARDS

	YES	NO
Have you adopted written standards for the prompt investigation of claims?	<input type="checkbox"/>	<input type="checkbox"/>
Have you adopted written standards for the prompt processing of claims?	<input type="checkbox"/>	<input type="checkbox"/>

INVESTIGATION

Have you completed an investigation of the claim asserted by the claimant?	<input type="checkbox"/>	<input type="checkbox"/>
Have you completed an investigation of my claims for defense and indemnification in the claimant’s claim against me?	<input type="checkbox"/>	<input type="checkbox"/>

POLICY CONDITIONS

Are you the insurer in the policy you issued to me?	<input type="checkbox"/>	<input type="checkbox"/>
Am I an insured in the policy?	<input type="checkbox"/>	<input type="checkbox"/>
Have I satisfied the notice provisions of the policy?	<input type="checkbox"/>	<input type="checkbox"/>
Did all alleged loss happen during the policy period?	<input type="checkbox"/>	<input type="checkbox"/>
Did all alleged loss happen within the coverage territory?	<input type="checkbox"/>	<input type="checkbox"/>
Have I paid the premium?	<input type="checkbox"/>	<input type="checkbox"/>
Have I violated any policy provision?	<input type="checkbox"/>	<input type="checkbox"/>

DEFENSE OF THE LAWSUIT

Do you agree unconditionally that the provisions of the policy impose upon you a duty to defend me?	<input type="checkbox"/>	<input type="checkbox"/>
Do you agree unconditionally that a conflict of interest exists which creates a duty on your part to provide independent counsel to me?	<input type="checkbox"/>	<input type="checkbox"/>

INDEMNITY FOR THE LAWSUIT

Are all of the claimant’s claimed damages covered for indemnity?	<input type="checkbox"/>	<input type="checkbox"/>
Is all of my alleged wrongful conduct covered for indemnity?	<input type="checkbox"/>	<input type="checkbox"/>

COVERAGE QUESTIONNAIRE

YES NO

Is all of the claimant's alleged loss caused by an occurrence, offense, of wrongful act that is covered for indemnity?

SETTLEMENT

Have you attempted in good faith to effectuate a prompt, fair, and equitable settlement of the claimant's claims?

Will you attempt in good faith to effectuate a prompt, fair, and equitable settlement of my claims for defense and indemnification, including paying independent counsel?

INSURER DECISIONS

Have you accepted or denied the claimant's claim in whole or in part?

Have you communicated to me in writing all grounds now known to you upon which you may deny coverage?

Is all grounds of your reservation of rights based on coverage disputes that have nothing to do with the issues being litigated in the lawsuit?

Will you expressly waive any grounds upon which you may deny coverage?

Do you unconditionally waive all rights to recover allocation or reimbursement of costs of defense, pursuant to contract or *Buss vs. Superior Court*?

Do you unconditionally waive all rights to recover allocation or reimbursement of costs of settlement, pursuant to contract or *Blue Ridge vs. Jacobsen*?

Have you accepted or denied my claims for defense and indemnification in whole in or part?

Have you been prejudiced by late notice of suit?

RELATIONSHIP WITH DEPENDENT COUNSEL

Do you have an attorney-client relationship with dependent counsel?

Did you hire dependent counsel to discharge your promise to defend me in the plaintiff's lawsuit filed against me?

Did you hire dependent counsel to protect your interests in the lawsuit?

Did you hire dependent counsel to protect me in the lawsuit?

Have you communicated any litigation guidelines to dependent counsel?

Do you expect to direct dependent counsel's conduct of my defense?

Do you expect dependent counsel to obtain your approval to do anything or to incur any expense regarding my defense?

Do you expect dependent counsel to disclose to you any confidential information relating to coverage?

Does dependent counsel represent you in any separate matter?

Could you be affected substantially by resolution of the lawsuit?

INDEPENDENT COUNSEL

Will you pay for independent counsel to defend me?

Will you pay independent counsel invoices within 40 days?

Will you pay the hourly rate charged by independent counsel to defend me?

COVERAGE QUESTIONNAIRE

BUSINESS PRACTICES (standards adopted, implemented, or performed)

YES NO

When the insurer agrees to defend any policyholder under a reservation of rights, does the insurer have a business practice to:

- Always provide ethical dependent counsel to defend me?
- Compel its insured to surrender control of the lawsuit it agrees to defend?
- Disclose to me that when coverage is disputed, the interests of the insured and the insurer are always divergent?
- Permit me to conduct the defense if he chooses to do so, unless a contrary intention appears from the language of a policy?
- Disclose to and assist me to get all benefits that might reasonably be payable under a policy?
- Analyze whether its reservation of rights creates a conflict of interest which creates a duty on its part to provide independent counsel to me?
- Provide independent counsel to me unless its reservation of rights is limited to coverage disputes that have nothing to do with the issues being litigated in the lawsuit?

When the insurer's reservation of rights creates a duty to provide independent counsel to me, does the insurer have a business practice to:

- Hire dependent counsel to conduct my defense?
- Require dependent counsel to comply with RPC, Rule 3-310?
- Disclose to me that it or dependent counsel have an obligation to explain to me the full implications of joint representation in situations where the insurer has reserved its rights to deny coverage?
- Always offer to pay for independent counsel selected by me unless the reservation of rights is based only on coverage disputes that have nothing to do with the issues being litigated in the lawsuit?
- Pay for independent counsel unless dependent counsel complies with Rule 3-310 or I waive the right to independent counsel?

INFORMATION REQUESTS

Will you please provide me with a copy of the following:

- Your written standards for the prompt investigation and processing of claims?
- Your claim file?
- Your claims manual?
- Your investigation of the claimant's claim?
- Your investigation of my claim for defense and indemnification in the lawsuit?
- All litigation guidelines you have communicated to dependent counsel?
- All writings describing the terms of your engagement of dependent counsel?
- The number of times you hired dependent counsel for each of the last three years?
- The total you have paid to dependent counsel for each of the last three years?
- The names and contact information for all attorneys retained by you in the ordinary course of business in the defense of similar actions in the community where the claim alleged in the lawsuit arose or is being defended?