

# COVERAGE QUESTIONNAIRE

## Definitions

“business practice” means a standard adopted or implemented, or a method, act, or practice in the business of insurance, performed with such frequency as to indicate a general business practice.

“claim” mean any assertion that you are obligated to pay policy benefits.

“claimant” means any person asserting a claim under any policy.

“dependent counsel” means any attorney selected by any insurer to defend any policyholder.

“I” and “me” means any policyholder.

“independent counsel” means any attorney selected by any policyholder who has no attorney-client, legal, business, financial, professional, or personal relationship with any insurer.

“lawsuit” means any pleading filed against any policyholder by any claimant.

“liability dispute” means any assertion that any policyholder is liable to pay damages to a claimant.

“policy” means any contract of insurance under which you have agreed to defend any lawsuit.

“policyholder” means any insured in any policy.

“you” means the insurer that issued any policy.

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Please answer the following questions by checking the appropriate “Yes” or “No” box that most accurately responds to each question and furnish complete explanations to all of your responses based on the facts now known by you. My informed written consent and authorization for dependent counsel to represent me is contingent upon my receipt of satisfactory responses to this Questionnaire.

	YES	NO
Do you unconditionally waive all bases upon which you may deny coverage to me?	<input type="checkbox"/>	<input type="checkbox"/>
If a judgment includes punitive damages, will you pay all compensatory damages?	<input type="checkbox"/>	<input type="checkbox"/>
Will you solicit and accept an offer to settle the lawsuit within my policy limit?	<input type="checkbox"/>	<input type="checkbox"/>

If you answered “yes” to all three questions, please return this Questionnaire, and disregard the remaining questions. Otherwise, please complete the entire Questionnaire.

INVESTIGATION	YES	NO
Have you completed an investigation of each claim asserted against me?	<input type="checkbox"/>	<input type="checkbox"/>
Have you completed an investigation of my claims for defense and indemnification?	<input type="checkbox"/>	<input type="checkbox"/>

SETTLEMENT	YES	NO
Have you attempted in good faith to effectuate a prompt, fair, and equitable settlement of each claimant’s claim against me?	<input type="checkbox"/>	<input type="checkbox"/>
Will you attempt in good faith to effectuate a prompt, fair, and equitable settlement of my claims for defense and indemnification?	<input type="checkbox"/>	<input type="checkbox"/>

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"/>
Have you adopted written substantive standards to apply correct rules of law to claims?	<input type="checkbox"/>	<input type="checkbox"/>

INDEPENDENT COUNSEL	YES	NO
Will you pay for independent counsel to defend me?	<input type="checkbox"/>	<input type="checkbox"/>
Will you pay independent counsel invoices within 40 days?	<input type="checkbox"/>	<input type="checkbox"/>
Will you pay the hourly rate charged by independent counsel to defend me?	<input type="checkbox"/>	<input type="checkbox"/>

## COVERAGE QUESTIONNAIRE

### INDEMNITY FOR THE LAWSUIT

YES NO

- Are all claimed damages covered for indemnity?
- Is all of my alleged wrongful conduct covered for indemnity?
- Is all of each claimant's alleged loss caused by an occurrence, offense, or wrongful act that is covered for indemnity?

### DEFENSE OF THE LAWSUIT

- Do you agree unconditionally that the provisions of each policy impose upon you a duty to defend me and do you waive all rights to assert that you have no duty to defend me?
- Do you agree unconditionally that a conflict of interest exists which creates a duty on your part to provide independent counsel to me and do you waive all rights to assert that you have no duty to provide independent counsel to me?

### INSURER DECISIONS

- Have you denied each claimant's third party claim against me in whole or in part?
- Have you denied my first party claims for defense and indemnification in whole in or part?
- Have you communicated to me in writing all grounds now known to you upon which you may deny coverage?
- Are 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*?

### RELATIONSHIP WITH DEPENDENT COUNSEL

(If you have not hired dependent counsel, you may disregard this category of questions.)

- Do you have an attorney-client relationship with dependent counsel?
- Did you hire dependent counsel to discharge your promise to defend me in the lawsuit?
- 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?

### POLICY CONDITIONS

- Are you the insurer under each policy issued to me?
- Am I an insured under each policy?
- Have I satisfied the notice provisions of each policy?
- Did all alleged loss happen during the policy period of each policy?

## COVERAGE QUESTIONNAIRE

### POLICY CONDITIONS (con't)

**YES NO**

- Did all alleged loss happen within the coverage territory of each policy?
- Have I paid the premium?
- Have I violated any policy provision?

### BUSINESS PRACTICES

When you agree to defend an insured under a reservation of rights, do you have a business practice to:

- Always provide ethical dependent counsel to defend the insured?
- Compel your insured to surrender control of the lawsuit you agree to defend?
- Disclose to the insured that when coverage is disputed, your interests and the interests of the insured are always divergent?
- Permit the insured to conduct the defense if he, she, or it chooses to do so?
- Disclose to and assist the insured to get all benefits that might reasonably be payable under each policy?
- Analyze whether your reservation of rights creates a conflict of interest which creates a duty on your part to provide independent counsel to the insured?
- Provide independent counsel to the insured unless your reservation of rights is limited to coverage disputes that have nothing to do with the issues being litigated in any lawsuit filed against the insured?

When your reservation of rights creates a duty to provide independent counsel to any insured, do you have a business practice to:

- Hire dependent counsel to conduct the defense?
- Require dependent counsel to comply with RPC, Rule 1.7?
- Disclose to the insured that you and dependent counsel have an obligation to explain to the insured the full implications of joint representation?
- Always offer to pay for independent counsel unless your reservation of rights is limited to coverage disputes that have nothing to do with the lawsuit?
- Pay for independent counsel unless dependent counsel complies with Rule 1.7 or the insured waives the right to independent counsel?

### INFORMATION REQUESTS

Will you please provide me with a copy of all writings evidencing or constituting the following:

- Your written standards to investigate, process claims applying the correct law?
- Your claim file, claims manual, litigation guidelines?
- Your investigation of all claims?
- All writings describing the terms of your engagement of dependent counsel including the number of times you hired dependent counsel 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 actions similar to the lawsuit in the community where the claim alleged in the lawsuit arose or is being defended?