

SERVING TWO MASTERS: THE TRIPARTITE RELATIONSHIP

UT CLE - THE CAR CRASH SEMINAR 2024

1

UNDERSTANDING THE RELATIONSHIP

WHAT IS IT?

- ARISES WHEN A LIABILITY INSURANCE CARRIER (INSURER) HIRES DEFENSE COUNSEL TO REPRESENT A POLICYHOLDER (INSURED)
- INSURANCE DEFENSE COVERAGE IS THE ONLY AREA OF THE LAW IN WHICH PARTIES ARE ROUTINELY REPRESENTED BY COUNSEL SELECTED AND PAID FOR BY A THIRD PARTY **WHOSE INTERESTS MAY DIFFER FROM THOSE OF THE ENTITY OR INDIVIDUAL COUNSEL IS RETAINED TO DEFEND**



2

UNDERSTANDING THE RELATIONSHIP

- THE DUTY TO DEFEND AT TIMES MAKES FOR AN **UNEASY ALLIANCE**
- INSURED WANTS THE **BEST DEFENSE** POSSIBLE WHILE INSURER – ALWAYS LOOKING AT THE BOTTOM LINE – WANTS TO PROVIDE A DEFENSE AT THE **LOWEST POSSIBLE COST**
- DEFENSE COUNSEL MAY END UP **CAUGHT IN THE MIDDLE**.
- THERE IS A LOT OF WISDOM IN THE OLD PROVERB: HE WHO PAYS THE PIPER CALLS THE TUNE
- THE LAWYER WANTS TO PROVIDE A COMPETENT DEFENSE, YET KNOWS WHO PAYS THE BILLS AND WHO CONTROLS NEW BUSINESS
- THIS SO-CALLED TRIPARTITE RELATIONSHIP HAS BEEN WELL DOCUMENTED AS A SOURCE OF **UNENDING ETHICAL, LEGAL, AND ECONOMIC TENSION**.

3

FOUR AREAS OF CONFLICT

1. CONTROL OF DEFENSE
2. CONTROL OF INFORMATION
3. CONTROL OF COSTS
4. CONTROL OF SETTLEMENT

4

WHO IS THE CLIENT?

- MOST STATES – IS RECOGNIZED AS DUAL REPRESENTATION IN WHICH DEFENSE COUNSEL HAS TWO CLIENTS – THE INSURER AND THE INSURED – OWE FULL SPECTRUM OF ATTORNEY-CLIENT DUTIES TO THEM BOTH
- SOME STATES – INSURED IS THE “PRIMARY CLIENT” – IMPLIES DEFENSE COUNSEL HAS LESSER OBLIGATION TO THE INSURER
- TEXAS IS IN THE MINORITY **THERE IS ONLY ONE CLIENT** – THE INSURED

5

WHO IS THE CLIENT?

- THE DUTY WAS FIRMLY ESTABLISHED BY SCOTX IN *Employers Casualty v. Tilley (Tex. 1973)*
- THE ATTORNEY HIRED BY THE INSURANCE COMPANY TO REPRESENT THE INSURED BECOMES THE ATTORNEY OF RECORD AND LEGAL REPRESENTATIVE OF THE INSURED AND AS SUCH **OWES THE INSURED THE SAME TYPE OF UNQUALIFIED LOYALTY AS IF HE HAD BEEN ORIGINALLY EMPLOYED BY THE INSURED**

6

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"Serving Two Masters"