INSURANCE COVERAGE AND RISK TRANSFER – TENDERING DEFENSE FOR ADDITIONAL INSUREDS AND INDEMNITEES

By *Mary Beth Sipos*

While confirming coverage at the outset of a case is recognized as a vital claims function, short shrift is sometimes given the further process of identifying additional coverage that may be available from sources other than the policy issued to a party as a named insured. This article focuses on additional insured insurance coverage and contractual risk transfer and suggests some methodology for efficiently identifying such other sources and effectively obtaining contribution to defense and indemnity.

While confirming coverage at the outset of a case is recognized as a vital claims function, short shrift is sometimes given the further process of identifying *additional* coverage that may be available from sources other than the policy issued to a party as a named insured. There are a number of different circumstances in which other policies and noninsurance indemnity agreements may provide coverage to an insured. These include:

1. Multiple policies on a risk as where the continuous trigger means multiple policies are triggered over the applicable period of time;

2. Different types of policies have been triggered in a single suit (e.g. a D&O loss where a defamation cause of action also triggers the GL policy or an auto accident involving both motor vehicles and mobile equipment implicating both auto liability and GL coverage);

3. Policies issued to other parties have been endorsed to add your insured as an "additional insured;" and

4. Non-insurance indemnity agreements running in favor of your insured (e.g. subcontracts, leases, vendor agreements).

This article focuses on the third category, additional insured or "AI" insurance coverage, and the fourth, contractual risk transfer or "CRT." This article also suggests some tips and methodology for efficiently identifying such other sources and effectively obtaining contribution to defense and indemnity from them.

As risk transfer becomes a commercial necessity, many insureds employ multiple means of spreading their potential exposure to risk, using mechanisms other than their own policies of insurance. Such mechanisms represent valuable sources of contribution to defense and indemnity that may significantly reduce or even eliminate the duty to defend or indemnity.

Increasingly sophisticated risk transfer mechanisms make the process of identifying other sources of defense and indemnity more complex and time consuming. However, it is time well spent. Early successful tender of defense to others can achieve several important litigation management goals. It permits the most control over the selection of defense counsel and the rates charged by them and permits cooperation and development of joint defense agreements and related cost sharing tools. It also avoids denials of expense reimbursement or coverage based on late notice.

Method to the Madness

From a claims perspective, the process of identifying and tapping into those mechanisms is more complex and definitely more time consuming than simply confirming coverage in the first instance. In most cases, one has access to the policy issued to the named insured as soon as the tender is received and a new claim is set up. Where a third party has promised to make one's named insured an additional insured on the third party's own policy, confirming that it did so and then identifying the carrier and the policy form can be more complicated. Likewise, identifying express contractual indemnity requires obtaining the specific contract or agreement, which could be a subcontract, vendor agreement or lease, for example, and following up on it.

Most of the information that identifies other coverage sources may be controlled by your insured and third parties and may have been created completely apart from and after policy issuance. In order to maximize the risk-spreading benefits of getting other carriers or indemnitors to participate in the defense of an insured, this investigation and analysis needs to take place at the earliest stage of the claims process.

Proceeding methodically ensures timely tenders to other parties. The most important steps can be boiled down to five basics:

- Confirming coverage under your policy for other parties;
- Identifying other policies that may cover your insured as an "additional insured;"
- Identifying non-insurance contracts that may indemnify your named insured;
- Tendering defense of the case to other parties; and
- Coordinating the defense of your insured with others.

Confirming Coverage – Who Is an Insured?

The main focus in the claims process is obtaining contribution to defense and indemnity from others for the benefit of your named insured. Nonetheless, there are also advantages to being the first to know who you may end up defending. In either event, whether you are the tendering or receiving party, the nuts and bolts of identifying who is and who is not insured under a policy apply with equal force.

Scheduled Insured and Additional Insureds

First and foremost determining who is an insured may be as simple as reading the policy. A party can be made an insured via a schedule of additional named insureds, by operation of the policy, or by endorsement. Schedules are the easiest means of confirming insured status since they will specifically name the insureds; endorsements may add insureds by schedule or on a blanket basis, in which latter case they are not actually named.

Of course, when you receive a coverage demand from a third party, you should have the benefit of full access to policy documents and underwriting files to determine if any parties other than your named insured are entitled to a defense. On the other hand, if you are seeking coverage, it may be quite hard to obtain the source material – certificates of insurance, policies, and endorsements from other carriers – unless your insured obtained copies at the time of contracting. Using all available resources, the insured, the tendering parties, and their respective agents or brokers increases the likelihood of finding the pertinent document.

Insured by Operation of the Policy

It is vital to read the policies obtained. There are numerous ways in which a liability policy can insure a party by operation of the policy terms, without listing them by name. Liability coverage often extends to third parties by operation of the policy terms.

For example, in auto liability policies, omnibus coverage provisions add permissive users as insureds. In the context of general liability, the "Who Is an Insured" section typically extends coverage to the real property manager of the named insured. Individuals named as co-defendants who are insured by policy definitions of insured officers, directors, employees or volunteer workers may or may not be entitled to a defense depending upon the capacity in which they were acting that gave rise to being named in the suit. Reading a policy against the caption of the case should readily highlight such issues.

Policy endorsements must also be reviewed. While certificates of insurance are frequently a jumping off point for this kind of coverage analysis, they can also identify underwriting discrepancies and other issues. Since they are indeed, "for information only" and do not amend the policy, it is not unusual to see certificates that identify the certificate holder as an additional insured where the policy in fact does not extend coverage to it at all.[1] While sorting out discrepancies between the certificate and the master policy can be complex, getting started at the outset of litigation gives a carrier a chance to be proactive.

Additional insured endorsements, discussed at greater length below, do actually amend the policy and can specifically schedule the people or entities added to the "Who Is An Insured" section of the policy or apply on a blanket basis. "A scheduled additional insured endorsement (such as CG 20 10) requires that the person or organization being given insured status be identified individually in a list, a 'schedule,' in the endorsement itself. The alternative approach to this—sometimes called 'blanket' coverage—is an endorsement specifying that all persons and organizations meeting a particular qualifying threshold (such as their requirement in a

contract that they be made additional insureds) are automatically insureds under the endorsement, without having to be individually listed."[2]

Since most blanket endorsements require some action or formality be performed to obtain coverage (most often a writing requiring AI coverage), the term "automatic" AI endorsement is an inaccurate, though common, moniker.

Thus, with a blanket endorsement, determining if co-litigants are also insureds also requires reading the endorsement and understanding the relationships between the co-parties and the insured to determine if the conditions that make a party an AI have been met. For example, blanket AI endorsements can add lessors of the named insured or any parties it has promised, in writing, to make additional insureds. Then, obtaining and reviewing leases and other contracts from the insured is necessary to reaching a conclusion about AI status.

Additional Insured Coverage for Your Insured

Certain commercial realities generally create the contractual leverage needed to force one party to obtain insurance for another. Knowing who your named insured is and identifying its relationships with other parties who are, or may become, involved in a suit is the first step. For example, the benefit of insurance clauses typically run:

- From tenant to landlord in commercial property leases;
- From seller to purchase in vendor agreements;
- From lessee to lessor in equipment rental contracts; and
- From subcontractors to general contractors in construction contracts (and may also require AI status for owners or affiliates or municipalities, especially those issuing permits for the construction).

These scenarios are common enough that there are ISO form endorsements tailored to those circumstances and many blanket forms provide "automatic" coverage for such contracting parties.[3]

The challenge lies in the fact that the contracts creating those relationships are typically not part of your policy, are often in any not underwriting file or submission, and may even have been created after issuance of your policy. Thus, it is incumbent upon the claim professional to partner with the insured to identify those relationships and any such agreements that exist.

Assuming there are insuring clauses in the subject contract, the next step is identifying the carriers and policies that provide such insurance. As noted above, if your insured is a certificate holder on a certificate of insurance, that should include the carrier name, policy number, and effective dates as of the date of issuance. Otherwise, contacting the party that promised to obtain AI coverage is the next best alternative.

Immediately upon identifying potential AI coverage, a tender letter should go to the other carrier on behalf of the would-be AI. There is simply no down side to tendering early and often. There are hundreds of late notice cases reported, but nobody ever lost coverage because they alerted their carrier to a suit too soon.

Tender places the burden on the AI carrier to respond. It now has the obligation under the policy and the applicable law and regulations governing its claims handling practices to acknowledge coverage if it exists or explain why it does not. Whether or not there are issues regarding priority of coverage or AI coverage for completed operations or any other issue under the sun, tender of defense starts the clock ticking on the duty to defend and should be done as soon as is feasible.

The biggest potential pitfalls exist in choosing to make a "targeted" tender, i.e. singling out a single insurance carrier among several that provide coverage and demanding that it alone provide coverage. While some jurisdictions sanction this practice, there are significant open coverage issues implicated by a targeted tender. First, there is the challenge of accurately predicting that the selected policy provides adequate limits of liability to satisfy and eventual judgment.

Second, a targeted tender has been held to cut off access to the tendering party's own excess coverage where the doctrine of horizontal exhaustion or primary coverage also applies, as it becomes impossible for other primary policies to exhaust.[4] Although this has only been reported in true excess coverage cases and not in the AI primary vs. excess context, it highlights the subtleties of choosing the target for the tender.

If you are on the receiving end of a targeted tender, your right to seek contribution from other carriers is effectively cut off.

Your Named Insured as an Indemnitee – Contractual Risk Transfer

Whether or not a contract has an insurance clause, and whether or not your named insured is an additional insured for a particular matter, you also need to review the indemnity clause in any contracts that might pertain to the litigation at hand. Although there may be an overlap, insurance clauses and indemnity clauses serve different purposes. Contracts that employ both are utilizing a belt and suspenders approach to risk transfer. To take full advantage of the differences, early tender to potential indemnitors and their insurers is also advisable.

Courts do recognized that a defense promised as part of an indemnity agreement is different from a promise to procure AI coverage. For example, the Supreme Court of Rhode Island summarized the distinction in *A.F. Lusi Constr., Inc. v. Peerless Ins. Co.*,[5] and explained:

Lusi first suggests that the indemnification provision in its subcontract with Pasquazzi, §11.11.1, shows that Pasquazzi agreed to obtain insurance for the benefit of Lusi. The terms of the indemnification provision, however, are conspicuously silent with respect to any obligation on Pasquazzi's part to provide insurance for Lusi. *A contractual duty to "indemnify and hold harmless" is not the legal equivalent of a duty to procure insurance coverage for that indemnity obligation.* Thus, §11.11.1 of the subcontract neither required Pasquazzi to obtain insurance for Lusi, nor did it provide support for Lusi's contention that it was an additional insured under the Peerless policy. [Emphasis supplied.]

On the other hand, AI coverage is often considered more valuable, perhaps because it is a direct obligation running from the AI carrier to the AI with no intermediary. By contrast, an indemnitor who promises to defend is creating an obligation on its own behalf, not on behalf of its insurer. As the court noted in a California case, *Alex Robertson Co. v. Imperial Casualty & Indemnity Co.*,[6] the indemnitee improperly sought recovery directly from the insurer under an indemnity clause since:

Its indemnity agreement is with Skinner, [the indemnitor] not with Imperial. Robertson may be able to proceed against Skinner under contractual or equitable indemnity theories. [Citation omitted.] In either case, however, it must establish liability on the part of Skinner. The Skinner/Robertson contract provides Skinner will indemnify Robertson for "liability [arising] out of the negligent acts, errors or omissions of [Skinner]."

Thus, whether or not a promisor obtained applicable AI coverage for your insured, it may have an independent duty to defend your named insured in connection with the indemnity clause of the contract. In fact, when there is no insurance clause, or when the promisor failed to procure AI coverage, or if the AI coverage just does not apply to the case, it is even more important to look at the indemnity clause. It may be your second bite at the mutual-duty- to-defend apple.

Well-written contracts have separate, easily distinguishable insurance and indemnity clauses. Standard leases and standard AIA or AGC construction contracts, separate them and identify each with a different title. The bad news is that there are many more non-standard contracts and it is not unusual to see these provisions mingled or outright confusion in a contract. The key is looking for a promise to defend:

- A *contract* may simply require that the indemnitor, "defend, indemnify and hold harmless the indemnitee from all claims and damages arising out of the indemnitor's performance of its contractual obligations."

- A *lease* may say, " . . .tenant agrees to hold harmless, defend and indemnify landlord for any loss, costs or expenses, including attorney fees and costs, attributable to bodily injury or damage to property, arising out of tenant's use of the demised premises and common areas, even if the indemnified party is partly at fault for such bodily injury or property damage …."

- A *subcontract* can include standard indemnity language, "to indemnify and save contractor harmless against all claims for damages ... loss, ... and/or theft ... growing out of the execution of subcontractor's work," but then also have the subcontractor promise, "at [its] own expense to defend any suit or action brought against contractor founded upon the claim of such damage[,] ... loss or theft."[7]

Defense under CRT Provisions – Duty to Defend from the Outset of Litigation?

Even where the contract is written clearly to include defense, there is conceptual disagreement over when an indemnity clause including a duty to defend the indemnitee obligates the indemnity to provide a defense at the outset of litigation, before and even regardless of whether the indemnitor is at fault.

The duty to defend promised the insured in a contract of insurance is different from any duty to defend provided by the indemnitor in connection with noninsurance indemnity. Although indemnity agreements can require an indemnitor to defend the indemnitee, courts

are divided on whether the defense obligation is the same as an insurer's duty to defend its insured. The biggest distinction is that an insurer must provide a contemporaneous defense, from day one, of a potentially covered suit. There is a split of authority, however, whether an indemnitor must defend from tender forward, or whether it only has to reimburse defense expense later if it loses at the end of the day.

This is partly because the general rules for contractual indemnity apply to claims of indemnity in non-insurance transactions, rather than the specific rules governing an insurer's duty to defend.[8] But some courts see no such distinction.[9]

The transition of California from the former camp to the latter is illustrated by the holdings in *Heppler v. J.M. Peters Co.*[10] and *Crawford v. Weather Shield.*[11] The Heppler opinion focused on the distinction between the obligations assumed by an indemnitor and an insurer and found no contemporaneous duty to defend in a noninsurance subcontract. It held:

> Contrary to plaintiffs' contentions, these subcontractors, who promised to indemnify Peters against damages caused by their negligent work, did not assume the role of liability insurers. Liability insurers protect insureds against damage or liability from generally defined risks in exchange for a premium. Insurers have a distinct and free-standing duty to defend their insureds as opposed to indemnitors, whose duty to defend is not triggered until it is determined that the proceeding against the indemnitee is "embraced by the indemnity."[12]

Nonetheless, the California Supreme Court in *Crawford*, citing the state's indemnity statute, Civil Code §2778 (3-4), ordered the subcontractor/indemnitor to pay the GC all of its defense fees even though the sub prevailed at trial and faced no liability. It held:

> [E]ven if the indemnity obligation is triggered only by an ultimate finding of the indemnitor's fault, the defense obligation applies before, and thus regardless of, any finding to be made in the course of the litigation for which a defense is owed.[13]

The *Crawford* court virtually dismissed *Heppler*, noting that "the *Heppler* court never separately addressed the defense clause of the subcontract," and concluding:

> Here, by contrast, we directly confront the relationship, and the distinctions, between the two clauses. Upon examination, as explained above, their language differs in a way suggesting that, even if the indemnity obligation is triggered only by an ultimate finding of the indemnitor's fault, the defense obligation applies before, and thus regardless of, any finding to be made in the course of the litigation for which a defense is owed. Hence, whatever *Heppler's* merits on the issues actually considered in that case, we do not find the decision helpful or persuasive on the narrow question before us.

In yet another approach, under Florida law, the court in *Wausau*[14] eliminated the intermediary. It noted, "[U]nder Florida common law indemnity, an indemnitee is entitled to indemnification not only for the judgment entered against it, but also for attorney's fees and court costs."[15] An indemnitee's insurer is also entitled to recover those expenses.

However, it conflated the indemnitor's duty to defend with the duty of the indemnitor's carrier, and therefore held:

> [T]his Court finds that such doubts as to whether a duty to defend exists should be resolved in favor of the insured. Accordingly, ... Lloyd's may pay for such defense by having one law firm represent both Comfort Inn and Choice Hotels (unless such firm demonstrates a conflict in representing both), or pay for a separate defense for Choice Hotels.

Nonetheless, a growing number of courts have held, in published and unpublished opinions, that an indemnitor has an obligation to defend its indemnitee from the outset of litigation.[16]

In short, some jurisdictions conclude that the duty to defend an indemnitee is strictly retroactive. That is to say the indemnitor only has to reimburse the attorneys' fees and costs its indemnitee incurred in its own defense after the fact, when the indemnitor fault and the fact of the indemnity have been established. Others require a contemporaneous defense starting with tender by the indemnitee. Still others seem to think the indemnitor's insurer has to provide the defense. The point is that tendering the defense to the indemnitor, like tendering to an insurer, gives it notice and puts it in the position of having to respond or suffer the potential consequence of wrongfully ignoring the tender.

Tender of Defense or "Vouching In"

Having identified insurance and non-insurance sources of potential coverage for your insured, the next step is tendering its defense to the carriers or non-insurer indemnitors that have a duty to defend.

Some jurisdictions do require actual notice and a formal tender of defense to commence the duty to defend and not just constructive notice that litigation is pending.[17] Other jurisdictions are considerably more relaxed and their holdings reflect an unwillingness to exalt form over substance where tender is concerned.[18] Still other states have been unable to finally resolve the issue and have significant splits of authority on the topic of tender. In *Cincinnati Cos. v. West American Insurance Co.*,[19] an Illinois appellate court held that "to have actual notice sufficient to locate and defend a suit, the insurer must know both that a cause of action has been filed and that the complaint falls within or potentially within the scope of the coverage of one of its policies." Importantly, for the topic at hand in this article, the court in *Home Insurance Co. v. United States Fidelity & Guaranty Co.*,[20] the First District Appellate Court found *Cincinnati* distinguishable where the additional insured was neither named nor listed on the policy.[21]

Most recently, however, another Illinois state appellate court distinguished *American National v. National Union*[22] and held that a named insured subcontractor's failure to notify its liability insurer did not deprive an additional insured contractor of coverage, where the contractor forwarded the complaint to the insurer.[23]

Even if a formal tender is not required to trigger a duty to defend, the drawbacks should inspire third parties to give early notice and request a defense. Under California law, for example, if an insured fails to comply with a notice provision or cooperation clause, the insurer must demonstrate that it was prejudiced by the noncompliance; however, if the insured violates a nonpayment provision by making voluntary payments without the insurer's consent before tender of the claim, no prejudice is necessary because such provisions serve as a condition precedent to the insured's right to be indemnified.[24]

In short, the lesson to be taken away: the more precise, prompt, and scrupulous the tender of defense is, the more likely the tendering party will succeed in obtaining the coverage due it.

Conclusion

Confirming policy terms and conditions is the "Coverage 101" of this business. Pursuing other sources for contribution to defense is the senior seminar for honors students. Striving to be familiar with the issues and educating yourself to the law of the particular jurisdiction or jurisdictions where you are operating is a long term opportunity and prospect for career growth. It makes the difference between good claims handling and great claims handling.

The effort is worth the while. Legal fees and costs incurred in the defense of insureds are a major driver for a carrier's allocated loss adjustment expense ("ALAE"). Finding other sources for contribution to defense fees and costs is therefore a key to reducing ALAE, lowering combined ratios, and making claims the hero of the company for once.

Endnotes

1. *See* Windt, 2 Insurance Claims and Disputes § 6:37A (6th ed.), Certificates of insurance.
2. *See* http://www.irmi.com/expert/articles/2009/gibson 07b-insurance-law-additional-insured.aspx.
3. *See e.g.* Additional Insured—Owners, Lessees or Contractors endorsement (CG 20 10 07 04); Additional Insured—Vendors endorsement (CG 20 15 07 04); Additional Insured—Lessor of Leased Equipment endorsement (CG 20 28 07 04).
4. *See Kajima Construction Services, Inc. v. St. Paul Fire and Marine Insurance Company*, 227 Ill.App.3d 102, 879 N.E.2d 305 (2007); *see also Employers Ins. of Wausau v. James McHugh Const. Co.*, 144 F.3d 1097 (7th Cir. 1998) (other insurance clause does not override policy holder's selective tender).
5. 847 A.2d 254 (2002).
6. 8 Cal.App.4th 338 (1992).
7. *See Crawford v. Weather Shield Mfg. Inc.*, 44 Cal.4th 541, 547-548 (2008).
8. *See e.g. Lynn v. Detroit Edison*, 2006 WL 1408443 (Mich. App. 2006); *Hegwood v. Ross Stores, Inc.*, 2006 WL 3422221 (N.D. Tex. 2006) (citations omitted) (a contract of indemnity is not construed in precisely the same manner as is an insurance contract, because it is not necessarily an adhesion contract as is an insurance policy).
9. *See National Union Fire Ins. Co. of Pittsburgh, Pa. v. Starplex Corp.*, 2008 WL 2474664 (Ore. App. 2008) (the standard for determining the duty of a contractual indemnitor to defend an indemnitee is the same as an insurer's duty to defend an insured); *Employers Ins. Co. of Wausau v. National Union Fire Ins. Co. of Pittsburgh, Pa.*, 2008 WL 1777807 (M.D. Fla. 2008) (no distinction between an insurer's duty to indemnify its insured for covered damages, which may include the amount of attorney fees incurred by an indemnitee in an underlying suit and an insurer's obligation to defend as required by the policy).
10. 87 Cal. Rptr. 2d 497 (Cal. App. 1999).
11. *See Crawford supra.*
12. *Heppler, supra* at 512-513.
13. *See Crawford, supra* at 561.
14. *See Employers Ins. Co. of Wausau, supra.*
15. *Citing Hiller Group, Inc. v. Redwing Carriers, Inc.*, 779 So. 2d 602, 604 (Fla. Dist. Ct. App. 2001).
16. *See e.g. State v. Prison Health Services, Inc.*, 2013 Vt. 119 (Vt., 2013) (In contractual duty-to-defend cases, an indemnitor's obligation to defend should be determined at the beginning of the case based on the pleadings); *Seven Signatures General Partnership v. Irongate Azrep BW LLC*, 2012 WL 1656972 (D.Haw.,2012) (applying "complaint allegation rule," that duty to defend arises if complaint alleges claims that fall within coverage of indemnity provision); *JNJ Foundation Specialists, Inc. v. D.R. Horton, Inc.*, 311 Ga.App. 269, 717 S.E.2d 219 (Ga. App. 2011); *Fabco Equipment, Inc. v. Kreilkamp Trucking, Inc.*, 352 Wis.2d 106, 841 N.W.2d 542 (Wis. App. 2013) (indmenitor's refusal to defend from outset gave

carrier superior equities and right to reimbursement of fees); *J.R. Simplot v. Chevron Pipeline Co.*, 563 F.3d 1102 (10th Cir. 2009); *Specialized Contracting, Inc. v. St. Paul Fire & Marine Ins. Co.*, 825 N.W.2d 872 (N.D., 2012) (dicta only). *But see United Rentals Hwy. Techs. v. Wells Cargo*, 289 P.3d 221 (Nev. 2012) (Subcontractor's duty to defend general contractor, pursuant to contract between parties for road improvement project, limited to the extent damages were caused by subcontractor and therefore was not triggered until such causation was shown, where there was no language in the contract imposing a duty to defend contractor beginning at the time a claim was asserted. *Citing Reyburn, supra* 127 Nev., 255 P.3d at 278).

17. *See 32* A.L.R.4th 141, *Modern status of rules requiring liability insurer to show prejudice to escape liability because of insured's failure or delay in giving notice of accident or claim, or in forwarding suit papers;* Couch on Insurance §199:98, *Actual Notice to Insurer as Sufficient* (2012). The degree of formality required varies considerably. In states like Arizona, Michigan, Minnesota, Wisconsin, New Hampshire and Montana, stricter formalities are observed. *See e.g. Litton Systems, Inc. v. Shaw's Sales and Service, Ltd.*, 119 Ariz. 10, 579 P.2d 48 (1978) (Setting forth requirements for proper "vouching in"); *XL Specialty Ins. Co. v. Patrol Helicopters, Inc.*, 2009 WL 4929261 (D. Mont. 2009); *Cargill, Inc. v. Ace American Ins. Co.* 784 N.W.2d 341 (Minn. 2010) (duty to defend is not triggered until the insured has provided the insurer "with notice of a suit and opportunity to defend").
18. *See Members Mut. Ins. Co. v. Benefield*, 255 Ark. 156, 499 S.W.2d 608 (1973)(default judgment debtor's failure to immediately forward all suit papers did not relieve insurer of liability where insurer received notice that suit filed in ample time to provide reasonable opportunity to defend); *Southeastern Exp. Systems, Inc. v. Southern Guar. Ins. Co. of Georgia*, 224 Ga. App. 697, 482 S.E.2d 433 (1997), cert. denied, (May 30, 1997) (notice and delivery of suit papers to insurer by either insured or anyone else, in timely and reasonable manner, will satisfy the condition precedent to liability under liability insurance policy); *Delafield v. J.K. Armsby Co.*, 124 A.D. 621, 109 N.Y.S. 314 (1st Dep't 1908) (late notice of third party action against insured did not relieve insurer of obligation to defend and indemnify where insurer received timely notice of accident and of main action to recover damages for personal injuries, conducted further investigation, and had opportunity to defend in third party action).
19. 183 Ill.2d 317, 329-30, 233 Ill. Dec. 649, 701 N.E.2d 499, 505 (1998).
20. 324 Ill.App.3d 981, 994-95, 258 Ill. Dec. 41, 755 N.E.2d 122, 134 (2001).
21. *See also American National Fire Insurance Co. v. National Union Fire Insurance Co. of Pittsburgh, PA*, 343 Ill.App.3d 93, 101, 277 Ill. Dec. 767, 796 N.E.2d 1133, 1139 (2003) (additional named insured required to tender defense directly to insurer rather to other insured named on policy).
22. *See American National, supra.*
23. *Mt. Hawley Ins. Co. v. Robinette Demolition, Inc.*, 2013 IL App (1st) 112847, 374 Ill. Dec. 36, 994 N.E.2d 973 (2013), appeal pending, No. 116556 (Nov. Term 2013).
24. *Trishan Air, Inc. v. Federal Ins. Co.*, 635 F.3d 422 (9th Cir. 2011) (applying California law).

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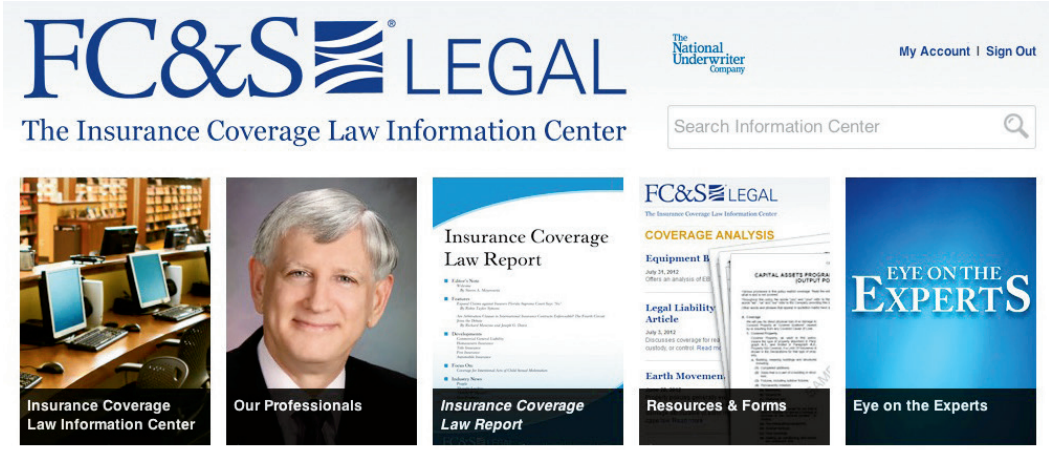

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