



## Alerts

### Second Reservation of Rights Letter Was Not Needed

January 25, 2012

*Insurance Coverage Alert*

Plaintiff insurer issued a reservation of rights letter to its insured after receiving a courtesy copy of a subrogation complaint from defendant insurer before defendant insurer filed the complaint. After defendant insurer filed the one-count complaint, plaintiff insurer undertook its insured's defense without issuing a second reservation of rights. Plaintiff insurer defended its insured through judgment without issuing a reservation of rights letter. The court held that there is no requirement that a reservation of rights be sent after the filing of the underlying complaint. The court reasoned that the better rule is that a reservation of rights letter be sent earlier rather than later. Thus, plaintiff insurer was not estopped to raise its coverage defense. The court noted that if the filed complaint raised new issues, a second letter might be required.

The court discussed the requirements of a reservation of rights letter, and stated that a reservation of rights must adequately inform the insured of the rights the insurer intends to reserve. The letter must specifically reference the policy defenses relied upon by the insurer and a potential conflict of interest. Because defendant insurer's underlying complaint was a one-count negligence complaint, the court concluded there was no conflict of interest created by plaintiff insurer raising the intentional injury exclusion because both plaintiff insurer and the insured would have profited from a finding that the insured was not negligent.

#### Practice Note

An insurer should promptly issue a reservation of rights letter upon receipt of a claim and may not be required to re-issue it after a suit is filed.

*American Family Mutual Insurance Co. v. Westfield Insurance Company*, 2011 IL App. (4th 110088)

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