

## **Reservation of rights letter... The insurer's prenup agreement**

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Magoun v. Liberty Mut. Ins. Co., 346 Mass. 677, 685 (1964). This is because the insured's counsel can work to defend the insured's best interest in all respects in these circumstances; namely, not only defending the insured contractor against the plaintiff's claims in the case, but doing so with an eye toward maximizing the opportunity for insurance coverage for any loss.

Counsel appointed by the insurer to defend you not only has no interest in defending your case so as to maximize your opportunity for coverage, they are ethically prohibited from addressing coverage issues. This is because where they are appointed by the insurer to represent you, that lawyer has both you and the insurer as clients. As such, that counsel is ethically prohibited from assisting you with obtaining coverage from the insurer. Your own counsel, however, has only one client - you, and, therefore, can work to find you coverage if possible while defending the case against you. Further, as your counsel also works to defend you from the claim asserted against you, his/her bills are the insurer's responsibility.

Do not allow the insurer to force its counsel upon you when it issues a reservation of rights. These insurance defense counsel may be as competent as your own lawyer, but they cannot help you with coverage, perhaps the most critical issue with which you are faced. Where the Supreme Judicial Court has held that the insurer must pay for your defense when it issues a reservation of rights including the reasonable cost of your own chosen lawyer, there is no reason to accept the insurer's counsel and every reason and right to reject that counsel. Protect yourself. Choose your own lawyer in these circumstances.

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