

# Perrin Conferences

## National Construction Defect Conference



### The Complicated Interplay of Coverage Counsel and Defense Counsel and the Ethical Issues that Arise

#### Moderator



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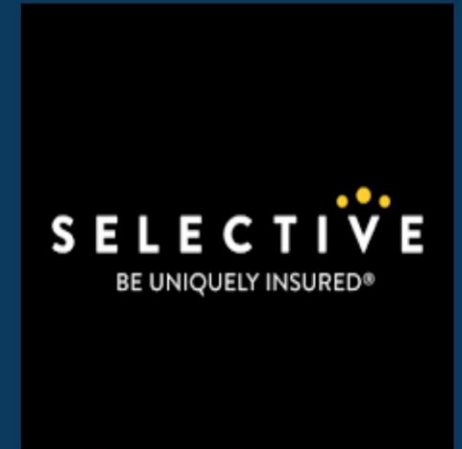
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# Interplay of Coverage and Defense and Ethical Issues Panel



# PERRIN NATIONAL CONSTRUCTION DEFENSE CONFERENCE

NEW ORLEANS, NOVEMBER 2023

# Introduction of Panel and Waivers

- A. Introductions**
- B. Summary of issues**
- C. Waivers**



# Issues Presented By Tripartite Relationship

# A. What is Tripartite? Who Is the Client?

One

Two

Three

**Example 1:**  
**California,**  
**Illinois, Mississippi**  
**- Insurer is also**  
**client, technically**

**Example 2: Texas,**  
**Florida**

**Insurance**  
**Professional View**

# B. Does Reservation of Rights Cause Conflict?

One

Two

Three

**Example 1:**  
**Reservation on**  
**faulty work**  
**exclusions or**  
**trigger.**

**Example 2:**  
**Reservation**  
**regarding punitive**  
**damages exclusion.**

**Insurance**  
**Professional View**



# Overlapping Roles and Responsibility of Coverage and Defense Counsel



# **A. Indemnity Analyses and Tenders**

- 1. Who is best to do this analysis?**
- 2. Are there different roles?**
- 3. Insurer view**

## **B. Additional Insured Analyses and Tenders**

- 1. Should defense counsel tender AI or analyze other entities' tender?**
- 2. Are there potential conflicts?**
- 3. Insurer view**



# Roles Re: Settlement Communications / Time-Limit Policy-Limit Demands

# A. Transmitting Demands

**ROLE OF DEFENSE  
COUNSEL**

**INVOLVMENT OF  
INSURED**

## **B. Evaluating Demands**

- 1. Role of defense and coverage counsel**
- 2. Is there a conflict for defense counsel in analyzing demand?**
- 3. Who asks for additional time?**
- 4. Should defense or coverage counsel be part of roundtables discussing demands?**
- 5. Should / can defense counsel respond with an evaluation in writing? Under what conditions should they not?**

## **C. Responding to Demands**

- 1. Should defense counsel ever respond to demands?**
- 2. Should coverage counsel respond to demands?**
- 3. Role of explaining coverage defenses to insured.**
- 4. Roles in drafting settlement and release documents.**



# Conclusions and Questions