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Differing Opinion

As an attorney primarily representing plaintiffs in civil matters, I have been dismayed at the increasing number of “captive counsel” law firms owned outright by insurance companies. Though not surprised, I was still very disappointed to read the analysis and conclusions reached in Ethics Opinions 609 and 610 (October, p. 856).

Opinion 609 is yet another blessing of what appears to me to be a fundamental and unavoidable conflict of interest when an insurance company employs both a lawyer and claims adjuster (whose job it is to determine coverage) to share the same office. Opinion 610, though certainly not as far-reaching, appears to be yet another chipping away at the contingent fee agreement, which, in my

opinion, is an essential right without which the vast majority of individual litigants would be effectively shut out of court. Both opinions fall squarely in line with the political agenda of the big insurance companies.

I believe that the vast majority of the Texas bar, if polled, would come to exactly the opposite conclusion in both of these ethics opinions. Imagine that a scenario in Opinion 609, instead of an attorney and claims adjuster sharing an office and common employer, involved an attorney and a chiropractor in the same situation? Does anyone suppose that such an office-sharing arrangement would not have been disallowed as a violation of the ethical rules by the Committee?

There is a clear and fundamental difference between an attorney who is employed by his client, such as corporate counsel, and one who works for an entity but actually represents persons who contract with that entity, as is the situation in Opinion 609.

The Committee can repeat all the high-minded mantras about ultimate loyalty to the client that it wants to justify such an insidious relationship, but the fact remains that an insurance company owes its primary duty to its owners and,

therefore, will always look for a way to avoid coverage if it can. Once it determines there is no coverage, does anyone really think the captive counsel would do anything except withdraw from representation of the actual client? Given that inevitable business reality, having a lawyer and claims adjuster in such close proximity is inherently a conflict of interest that we should not excuse as just another standard business procedure.

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“Calvary” v. “Cavalry”

Very nice column by [State Bar President] Bob Black on our veterans (November, p. 892). Leanne Johnson’s portion recites that her father was a member of the “1st Calvary Division, U.S. Army.” This, of course, should be “Cavalry.” I recognize that the substance of Ms. Johnson’s comments are what is really important, but I also believe the *Texas Bar Journal* should be aware of this error.

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