



CHUBB GROUP OF INSURANCE COMPANIES

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March 27, 1997

Certified Mail - Return Receipt Requested

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1001 Bishop Street
Honolulu, HI 96813

Post-It® Fax Note	7671	Date	4-8-97	# of pages	8
To	Mr. Bob Harmon	From	Robin		
Co./Dept.		Co.	John D. Marshall		
Phone #		Phone #	523-3834		
Fax #	522-8658	Fax #	545-1835		

Re: Insured: Kamehameha Schools/Bernice Pauahi Bishop Estate
("KSBE")
Policy: 8146-79-11
Case: P&C Insurance Company, Inc., et al vs. Bobby H. Harmon
Venue: First Circuit Court/HI/Civil No. 97-0512-02
Company: Federal Insurance Company ("Federal")

Dear Mr. Marshall:

This follows our letter of March 4, 1997, and more fully responds to the inquiry regarding coverage for the above captioned matter.

We have reviewed the provisions of KSBE's Association Liability Insurance Policy No. 8146 79 11 in light of the facts and circumstances set forth in the above captioned Complaint. Regretfully, for the reasons detailed below, our review has resulted in a decision to decline coverage for this litigation. We will summarize some of the background of the matter so that you will better understand the context of our coverage position. However, you should refer to the Complaint itself for the factual basis of plaintiffs' claims. Please also note that this letter does not modify the terms and conditions of the policy. The words in bold print are defined in the policy.

Background

P&C Insurance Company, Inc., and Richard S. H. Wong, Oswald K. Stender, Lokelani Lindsey, Gerard A. Jervis and Henry H. Peters, as Trustees of the Estate of Bernice Pauahi Bishop on February 7, 1997, filed their Complaint against Bobby N. Harmon. They assert in the following counts:

- I. Breach of Fiduciary Duty;
- II. Injunctive Relief;
- III. Misappropriation of Trade Secrets;

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IV. Conversion

The action, in relevant part, is brought by the Trustees in their official capacity as trustees of KSBE and on behalf of and for KSBE. P&C Insurance Company, Inc. ("P&C") is a subsidiary of Pauahi Holding Corporation which in turn is wholly owned by KSBE. P&C is a captive insurance brokerage company exclusively managing KSBE's, and its affiliated companies, insurance matters.

Mr. Harmon was hired November 7, 1988, as Risk Manager/Insurance Administrator of KSBE. On November 15, 1994, he was appointed President of P&C.

As an employee of KSBE and an officer of P&C, Mr. Harmon allegedly owed certain fiduciary duties to Plaintiffs: a "duty of care" to preserve Plaintiffs' confidential and privileged information and not to disclose this information to outside third parties and a "duty of loyalty" not to use this confidential information adverse to the Plaintiffs' interests. These duties allegedly did not expire upon Mr. Harmon's termination of employment from KSBE and P&C on November 20, 1996.

Mr. Harmon allegedly has breached his fiduciary duties to Plaintiffs by converting their confidential, proprietary and privileged information to his personal use, using the information against Plaintiffs' best interests, soliciting third parties to breach their obligations with Plaintiffs, and by making disparaging and defamatory statements. The Plaintiffs also assert that the confidential, proprietary and privileged information complained of constitute "trade secrets" from which they derive economic value. Mr. Harmon is allegedly using these "trade secrets" to injure Plaintiffs' interests and business relationships.

The Plaintiffs pray for damages in an amount to be proven at trial; for a temporary restraining order, preliminary and permanent injunction; for damages pursuant to Sections 480-2(a) and 480-13, Haw. Rev. Stat., plus treble damages; for exemplary and punitive damages; for pre-judgment and post-judgment interest; for attorneys' fees and costs; and such other relief the Court deems proper.

Coverage

Federal's Association Liability Insurance Policy No. 8146 79 11 is effective for the **Policy Period** October 1, 1996 to July 1, 1997, per Endorsement No. 11, and provides Limits of Liability of \$25 million each Loss, each **Policy Year**. These limits are subject to a \$250,000 Deductible. Federal is not liable for any amounts within the Deductible or in excess of the Policy limits.

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Coverage under the Policy is provided by the Insuring Clauses, which state:

ERRORS AND OMISSIONS INSURANCE

1.1 The Company shall pay on behalf of the **Insured** all **Loss** which such **Insured** shall become legally obligated to pay on account of any claim made against him during or after the **Policy Period** for a **Wrongful Act**:

(A) committed, attempted, or allegedly committed or attempted by such **Insured** before or during the **Policy Period** and,

(B) reported to the Company, in accordance with Section 4, during the **Policy Period** or, if exercised, the **Extended Reporting Period**.

PERSONAL INJURY AND PUBLISHERS LIABILITY

1.2 The Company shall pay on behalf of the **Insured**, all **Loss** which the **Insured** shall become obligated to pay on account of any claim made against him alleging:

(A) false arrest, wrongful detention or imprisonment, or malicious prosecution;

(B) libel, slander, defamation of character, or invasion of privacy;

(C) wrongful entry, eviction or other invasion of the right of privacy;

(D) infringement of copyright or trademark or unauthorized use of title;

(E) plagiarism or misappropriation of ideas

Provided such offenses were:

(A) committed, attempted or allegedly committed or attempted by such **Insured** before or during the **Policy Period** and

(B) reported to the Company, in accordance with Section 4, during the **Policy Period** or, if exercised, the **Extended Reporting Period**.

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Endorsements No. 1, 8 and 9 amend Section 8.1, Definitions, in pertinent part, as follows:

Insured means:

- (A) any **Insured Non-Profit Organization**, and
- (B) any **Insured Person**

Insured Person means:

- (A) with regard to an **Insured Non-Profit Organization**, any person who has been, now is, or shall become a duly elected director or trustee, a duly elected or appointed officer, an employee, or committee member, whether or not they are salaried, and any other person acting on behalf of the **Insured Non-Profit Organization** or at the direction of an officer or board of directors of the **Insured Non-Profit Organization**;
- (B) with regard to an **Insured For-Profit Organization**, any person who has been, now is, or shall become a duly elected director or trustee, a duly elected or appointed officer, an employee, or committee member, whether or not they are salaried, of the **Insured For-Profit Organization**.

Insured For-Profit Organization means any **Subsidiary** of the Association named in Item 1 of the Declarations that is not an **Insured Non-Profit Organization**.

Subsidiary means any organization in which more than 50% of the outstanding securities or voting rights representing the present right to vote for election of directors is owned or controlled, directly or indirectly, in any combination, by one or more **Insured Non-Profit Organizations** or **Insured For-Profit Organizations**.

Insured Organization means any **Insured Non-Profit Organization** and any **Insured For-Profit Organization**.

In the current litigation, the individual plaintiff Trustees and Mr. Harmon are deemed to be **Insured Persons**. As such, both the Trustees and Mr. Harmon are considered **Insureds** under the policy. KSBE is also an **Insured** under the policy and P&C would be deemed to be an **Insured For-Profit Organization**.

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Endorsement No. 6 amends Section 3.1, Exclusions, in relevant part, by adding (H) as follows:

The Company shall not be liable under this policy to make any payment for **Loss** in connection with any claim(s) made against any **Insured**:

(H) 1. by or on behalf of an **Insured** or an **Insured For-Profit Organization**; however, this exclusion does not apply to:

A. any claim that is a derivative action on behalf of an **Insured Organization** by one or more persons who are not **Insured Persons** and who bring and maintain the claim without the solicitation, assistance or participation of any **Insured Person**, or

B. any **Employment Claim**.

2. **Employment Claim** means any claim for a **Wrongful Act** which is an actual or alleged wrongful dismissal, discharge or termination of employment, breach of any oral or written employment contract or quasi-employment contract, employment related misrepresentation, violation of employment discrimination laws (including workplace harassment), wrongful failure to employ or promote, wrongful discipline, wrongful deprivation of a career opportunity, failure to grant tenure, negligent evaluation, invasion of privacy, employment-related defamation or employment-related wrongful infliction of emotional distress.

In the instant matter, the individual Trustees are **Insureds** bringing suit, on behalf of KSBE also an **Insured**, coterminously on all counts with P&C, an **Insured For-Profit Organization**, as Plaintiffs against Mr. Harmon, another **Insured**. Neither of the exceptions to Exclusion (H) apply to Plaintiffs' claims against Mr. Harmon, therefore, Exclusion (H) will apply to preclude coverage in its entirety for the captioned matter, including **Defense Costs**.

Although we recognize that the allegations set forth in the Complaint are without substantiation at this time, and nothing in this letter is intended to suggest that they have any legal or factual merit, we nevertheless must reserve the right to enforce certain other policy provisions which may operate to limit and/or bar coverage.

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Endorsement No. 1, 3, adds, in pertinent part, the following Section 3.4:

The Company shall not be liable under this policy to make any payment for **Loss** in connection with any claim(s) made against any **Insured Person(s)** of any **Insured For-Profit Organization**:

- (D) based upon, arising from, or in consequence of bodily injury, mental or emotional distress, sickness, disease, death, disability, shock, mental injury, false arrest, false imprisonment, wrongful eviction, wrongful entry, wrongful detention, malicious prosecution, libel, slander, defamation, humiliation, invasion of privacy, or damage to or destruction of any tangible property including loss of use thereof.

Because Mr. Harmon was once President, hence an **Insured Person**, of P&C, an **Insured For-Profit Organization**, Exclusion 3.4 (D) would apply to preclude coverage for Plaintiffs' claims of defamation. Additionally, P&C's "loss of use" of its confidential, proprietary and privileged information, as contained in books and records, arguably constitutes "tangible property" excluded from coverage by 3.4 (D).

Section 8.1, as partially modified by Endorsement No. 1, effective October 27, 1995, defines **Wrongful Act** and **Loss** as follows:

Wrongful Act means any error, misstatement or misleading statement, act or omission, or neglect or breach of duty committed, attempted or allegedly committed or attempted by any **Insured** individually or otherwise, in the discharge of his duties to the Association, or any matter claimed against him solely by reason of his serving in such capacity. All such causally connected errors, statements, acts, omissions, neglects or breaches of duty or other such matters committed or attempted by, allegedly committed or attempted by or claimed against one or more of the Insureds shall be deemed interrelated **Wrongful Acts**.

Loss means the total amount which the **Insured** becomes legally obligated to pay on account of all claims made against it for **Wrongful Acts** with respect to which coverage hereunder applies, including, but not limited to, damages, judgments, settlements, costs and **Defense Costs**. **Loss** does not include fines or penalties imposed by law or matters uninsurable under the law pursuant to which this policy is construed. **Loss** also does not include any amount allocated to uncovered loss pursuant to Section 1.4.

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The definition of Loss precludes coverage for the punitive damages and treble damages sought by Plaintiffs. In addition, the intentional conduct alleged in the Complaint may not be covered under the Policy and applicable law.

Exclusion 3.1(G) may apply to the claims against Mr. Harmon based upon his allegedly having gained any personal profit or advantage to which he was not legally entitled to.

Exclusion 3.2(C) may apply regarding defamatory utterances or publication.

Section 7.1 provides that the Policy is to be excess of any other available insurance. We suggest you tender this matter under any other policy Mr. Harmon may have, if you have not already done so.

The coverage analysis contained herein is not meant to be exhaustive as certain other applicable policy provisions have not been fully discussed in light of the absence of coverage for Mr. Harmon pursuant to the application of Endorsement No. 6, the "insured vs. insured" exclusion. Nevertheless, any such affirmative policy defenses are not waived should additional circumstances or developments, for any reason, lead to a revision of Federal's position.

Federal's position with respect to this Claim is based upon the information provided to date and is subject to further evaluation as additional information becomes available. Federal reserves its right to assert additional terms and provisions under the Policy and at law, which may become applicable as new information is learned.

Pursuant to the California Code of Regulations, Title 10, Chapter 5, Subchapter 8, Unfair Claims Settlement Practices Regulations, we must notify you that you may have this matter reviewed by the:

California Department of Insurance
Consumer Services Division
300 South Spring Street
Los Angeles, CA 90013
(1-800-927-4357).

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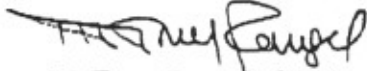
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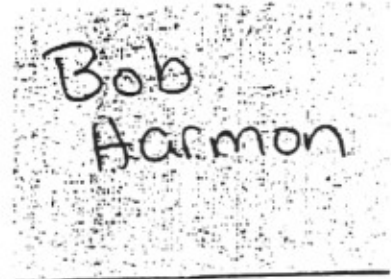
Please feel free to call me at (818) 906-6488 with any questions.

Very truly yours,



M. Tony Rangel, CPCU
D&O Claim Examiner

KAME0327.MTR



Bob
Harmon