



CARL T. C. GUTIERREZ  
GOVERNOR OF GUAM

OCT 02 2001

The Honorable Joanne M. S. Brown  
Legislative Secretary  
I Mina'Bente Sais na Liheslaturan Guåhan  
Twenty-Sixth Guam Legislature  
Suite 200  
130 Aspinal Street  
Hagåtña, Guam 96910

Dear Legislative Secretary Brown:

Enclosed please find Bill No. 90 (LS) entitled: "AN ACT TO ADD § 12111 TO TITLE 22 OF THE GUAM CODE ANNOTATED, RELATIVE TO CONFLICTS OF INTEREST BETWEEN AN INSURER AND INSURED" which I have signed into law as **Public Law No. 26-39**.

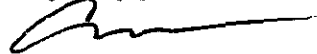
This legislation regulates how a "conflicts attorney" is selected and paid for by an insurance company, when a conflict of interest arises between the insurance company and the insured.

When an insured is sued, the insurance company usually has to defend the insured as part of the policy. When a conflict of interest arises, under this legislation the insurance company will pay for another separate attorney to represent the insured, apart from the attorney representing the company. The attorney selected to represent the insured, in this situation, must be an attorney who has had 5 years of experience in civil litigation, and must charge rates that are usual rates for the same type of litigation.

This legislation specifies that it is not a conflict of interest between an insured and the insurance company if the insured would like to sue for punitive damages, or if the insured is sued for an amount that is greater than the amount of the insurance policy.

This legislation specifies the situation under which an insurance company hires a "conflicts attorney" for the insured. An insured can also hire an attorney at any time, and pay for the attorney themselves.


Very truly yours,

  
Carl T. C. Gutierrez  
I Maga'Lahen Guåhan  
Governor of Guam

Attachment: copy attached for signed bill or overridden bill  
original attached for vetoed bill

cc: The Honorable Antonio R. Unpingco  
Speaker

0494

OFFICE OF THE LEGISLATIVE SECRETARY	
ACKNOWLEDGMENT RECEIPT	
Received By	
Time	1000
Date	10/2/01


MINA'BENTE SAIS NA LIHESLATURAN GUÅHAN  
2001 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

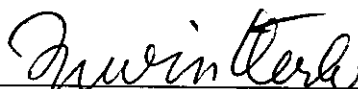
This is to certify that Bill No. 90 (LS), "AN ACT TO ADD § 12111 TO TITLE 22 OF THE GUAM CODE ANNOTATED, RELATIVE TO CONFLICTS OF INTEREST BETWEEN AN INSURER AND INSURED," was on the 14<sup>th</sup> day of September, 2001, duly and regularly passed.

  
ANTONIO R. UNPINGCO  
Speaker


Attested:

  
JOANNE M.S. BROWN  
Senator and Legislative Secretary

-----  
This Act was received by I Maga'lahaen Guåhan this 20<sup>th</sup> day of September, 2001,  
at 2:00 o'clock P.M.

  
Assistant Staff Officer  
Maga'lahaen's Office

APPROVED:

  
CARL T. C. GUTIERREZ  
I Maga'lahaen Guåhan

Date: 10-2-01

Public Law No. 26-39<sup>5</sup>

: :  
**MINA'BENTE SAIS NA LIHESLATURAN GUÅHAN**  
**2001 (FIRST) Regular Session**

**Bill No. 90 (LS)**

As amended.

Introduced by:

A. R. Unpingco

F. P. Camacho

Mark Forbes

J. F. Ada

T. C. Ada

F. B. Aguon, Jr.

J. M.S. Brown

E. B. Calvo

M. C. Charfauros

L. F. Kasperbauer

L. A. Leon Guerrero

V. C. Pangelinan

A. L.G. Santos

J. T. Won Pat

**AN ACT TO ADD § 12111 TO TITLE 22 OF THE  
GUAM CODE ANNOTATED, RELATIVE TO  
CONFLICTS OF INTEREST BETWEEN AN  
INSURER AND INSURED.**

1        **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2        **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*  
3 finds that there is a need to eliminate uncertainty concerning the rights of  
4 insured parties and insurers following a claimed loss and during the claims  
5 process. This includes the following concerns:

6            (a) *I Liheslaturan Guåhan* finds that there is a need to eliminate  
7 uncertainty concerning the right of an insured to select independent

1 counsel when a conflict of interest arises between insured and insurer  
2 together with the obligation of the insurer to pay for such legal services.

3 (b) *I Liheslaturan Guåhan* finds that there is a need to define the  
4 duty of an insurer to provide independent counsel for its insured when  
5 an insurer reserves its rights as to coverage under a policy of insurance,  
6 and to define the advent of a conflict of interest which requires that the  
7 insured be permitted to select independent counsel whose legal fees are  
8 paid by the insurer.

9 (c) *I Liheslaturan Guåhan* finds that there is a need to address the  
10 issues of denial of coverage by an insurer, claims in excess of policy  
11 limits and/or claims for punitive damages.

12 (d) *I Liheslaturan Guåhan* finds that there is a need to determine  
13 the qualifications of independent counsel selected by the insured, and  
14 the compensation of such counsel by the insurer in order to assure  
15 adequate representation and to avoid excessive or fraudulent billings  
16 for legal services provided by independent counsel.

17 (e) *I Liheslaturan Guåhan* finds that there is a need to ensure  
18 protection of the attorney-client privilege in the context of independent  
19 counsel for insureds arising from conflict of interest.

20 (f) *I Liheslaturan Guåhan* finds that there is a need to provide for  
21 resolution of attorney fee disputes and waiver of counsel.

22 **Section 2.** Section 12111 is hereby *added* to Article 1, Chapter 12,  
23 Division 2 of Title 22 of the Guam Code Annotated to read as follows:

1           **"Section 12111. Conflict of Interest Between Insured and**  
2 **Insurer.**

3           (a) *If the provisions of a policy of insurance impose a duty*  
4 *to defend upon an insurer and a conflict of interest arises which*  
5 *creates a duty on the part of the insurer to provide independent*  
6 *counsel to the insured, the insurer shall provide independent*  
7 *counsel to represent the insured, unless, at the time the insured is*  
8 *informed that a possible conflict may arise or does exist, the*  
9 *insured expressly waives, in writing, the right to independent*  
10 *counsel. An insurance contract may contain a provision which*  
11 *sets forth the method of selecting independent counsel consistent*  
12 *with this Section.*

13           (b) *For purposes of this Section, a conflict of interest does*  
14 *not exist as to all allegations or facts in the litigation for which the*  
15 *insurer denies coverage; however, when an insurer reserves its*  
16 *rights on a given issue and the outcome of that coverage issue can*  
17 *be controlled by counsel first retained by the insurer for the*  
18 *defense of the claim, a conflict of interest may exist. No conflict of*  
19 *interest shall be deemed to exist as to allegations of punitive*  
20 *damages or be deemed to exist solely because an insured is sued*  
21 *for an amount in excess of the insurance policy limits.*

22           (c) *When the insured has selected independent counsel to*  
23 *represent the insured, the insurer may exercise its right to require*  
24 *that the counsel selected by the insured possess certain minimum*

1 qualifications, which may include that the selected counsel have:  
2 (i) at least five (5) years in civil litigation practice, which includes  
3 substantial defense experience in the subject at issue in the  
4 litigation; *and* (ii) errors and omissions coverage.

5 The insurer's obligation to pay fees to the independent  
6 counsel selected by the insured is *limited* to the rates which are  
7 actually paid by the insurer to attorneys retained by it in the  
8 ordinary course of business in the defense of similar actions in the  
9 community where the claim arose or is being defended. This  
10 Subdivision does *not* invalidate other different or additional policy  
11 provisions pertaining to attorney's fees or providing methods of  
12 settlement of disputes concerning those fees.

13 Any dispute concerning attorney's fees *not* resolved by these  
14 methods shall be resolved by final and binding arbitration by a  
15 single neutral arbitrator selected by the parties to the dispute. In  
16 the event that the parties cannot agree upon the selection of a  
17 neutral arbitrator, then upon petition of any party to the dispute,  
18 the Superior Court of Guam shall designate a neutral arbitrator.

19 (d) When independent counsel has been selected by the  
20 insured, it shall be the duty of that counsel and the insured to  
21 disclose to the insurer all information concerning the action, *except*  
22 privileged materials relevant to coverage disputes, and to timely  
23 inform and consult with the insurer on all matters relating to the  
24 action. Any claim of privilege asserted is *subject to in camera*

1 review by the Superior Court of Guam. Any information  
2 disclosed by the insured or by independent counsel is *not* a waiver  
3 of the privilege as to any other party, person or legal entity.

4 (e) The insured may waive its rights to select independent  
5 counsel by signing the following statement: *'I have been advised*  
6 *and informed of my right to select independent counsel to represent me*  
7 *in this lawsuit. I have considered this matter fully and freely waive my*  
8 *right to select independent counsel at this time. I authorize my insurer*  
9 *to select a defense attorney to represent me in this lawsuit.'*

10 (f) Where the insured selects independent counsel  
11 pursuant to the provisions of this Section, both the counsel  
12 provided by the insurer and independent counsel selected by the  
13 insured shall be allowed to participate in all aspects of the  
14 litigation. Counsel shall cooperate fully in the exchange of  
15 information that is consistent with each counsel's ethical and legal  
16 obligation to the insured.

17 Nothing in this Section shall relieve the insured of the  
18 insured's duty to cooperate with the insurer under the provisions  
19 of the insurance contract."



THE OFFICE OF  
**Senator Felix P. Camacho**  
TWENTY-SIXTH GUAM LEGISLATURE

June 26, 2001

The Honorable Antonio R. Unpingco  
Speaker  
I Mina' Bente Sais Na Liheslaturan Guahan  
155 Hessler Street  
Hagatna, Guam 96910

Dear Mr. Speaker:

The Committee on Tourism, Transportation and Economic Development, to which was referred **Bill No. 90 (LS)**, "AN ACT TO ADD §12111 TO ARTICLE 1, CHAPTER 12, DIVISION 2 OF TITLE 22 OF THE GUAM CODE ANNOTATED, RELATIVE TO CONFLICTS OF INTEREST BETWEEN THE INSURER AND INSURED; DUTY OF INSURER TO PROVIDE INDEPENDENT COUNSEL TO INSURED IN CERTAIN CASES; SELECTION AND COMPENSATION OF COUNSEL; WAIVER OF COUNSEL," does hereby report back with the recommendation **TO DO PASS**.

The Committee votes are as follows:

- 7   **To Pass**
- Not To Pass**
- To The Inactive File**
- Abstained**
- Off-Island**
- Not Available**

A copy of the Committee Report and all pertinent documents are attached for your information and file.

Sincerely,

Felix P. Camacho





# MINA 'ENTE SAIS NA LIHE LATURAN GUAHAN

Kumitehan Areklamento, Hinanao Gubetnamenton Hinirát, Rifotma yan Rinueba,  
yan Asunton Fidirát, Taotao Hiyong yan Hinirát

*Senadot Mark Forbes, Gehilu  
Kabisiyon Mayurát*

07 JUN 2001

## MEMORANDUM

TO: Chairman  
Committee on Tourism, Transportation and Economic Development

FROM: Chairman  
Committee on Rules, General Governmental Operations, Reorganization and  
Reform, and Federal, Foreign and General Affairs

SUBJECT: Principal Referral – Bill No. 90 (LS)

The above bill is referred to your Committee as the Principal Committee, in accordance with Section 6.04.05.01. of the Standing Rules. Your Committee is the Committee authorized to perform the public hearing on this bill and to amend or substitute the bill, as well as report the bill out to the Body. It is recommended that you schedule a public hearing at your earliest convenience.

Thank you for your attention to this matter.

**MARK FORBES**

Attachment

COMMITTEE REPORT

ON

BILL NO. 90(LS)

“AN ACT TO ADD §12111 TO ARTICLE 1, CHAPTER 12, DIVISION 2 OF TITLE 22 OF THE GUAM CODE ANNOTATED, RELATIVE TO CONFLICTS OF INTEREST BETWEEN THE INSURER AND INSURED; DUTY OF INSURER TO PROVIDE INDEPENDENT COUNSEL TO INSURED IN CERTAIN CASES; SELECTION AND COMPENSATION OF COUNSEL; WAIVER OF COUNSEL.”

COMMITTEE MEMBERS

Chairman: Felix P. Camacho

Vice Chairman: Kaleo Moylan

Ex-Officio Member: Antonio R. Unpingco

Larry Kasperbauer

Joseph Ada

Mark Forbes

Eddie Baza Calvo

Mark Charfauros

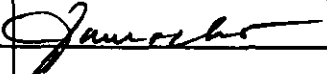
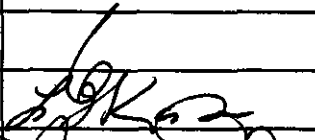
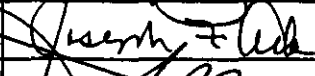

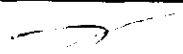
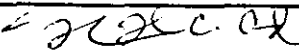
Ben Pangelinan

Tom Ada

Lou Leon Guerrero

# VOTING SHEET

**BILL 90 (LS)**

RECOMMENDATION TO					
COMMITTEE MEMBERS	SIGNATURE	TO PASS	NOT TO PASS	ABSTAIN	INACTIVE FILE
Senator Felix Camacho		✓			
Senator Kaleo Moylan					
Speaker Tony Unpingco		✓			
Vice Speaker Larry Kasperbauer		X			
Senator Joseph Ada		X			
Senator Mark Forbes		✓			
Senator Eddie Baza Calvo					
Senator Mark Charfauros					
Senator Ben Pangelinan		✓			
Senator Tom Ada		✓			
Senator Lou Leon Guerrero					

**COMMITTEE REPORT  
TOURISM, TRANSPORTATION AND ECONOMIC  
DEVELOPMENT**

**BILL NO. 90 (LS)**

AN ACT TO ADD §12111 TO ARTICLE 1, CHAPTER 12, DIVISION 2 OF TITLE 22 OF THE GUAM CODE ANNOTATED, RELATIVE TO CONFLICTS OF INTEREST BETWEEN THE INSURER AND INSURED; DUTY OF INSURER TO PROVIDE INDEPENDENT COUNSEL TO INSURED IN CERTAIN CASES; SELECTION AND COMPENSATION OF COUNSEL; WAIVER OF COUNSEL.

**I. PUBLIC HEARING**

The Committee on Tourism, Transportation and Economic Development held a public hearing on June 19th, at 10 a.m. to hear testimony on Bill No. 90(LS), "AN ACT TO ADD §12111 TO ARTICLE 1, CHAPTER 12, DIVISION 2 OF TITLE 22 OF THE GUAM CODE ANNOTATED, RELATIVE TO CONFLICTS OF INTEREST BETWEEN THE INSURER AND INSURED; DUTY OF INSURER TO PROVIDE INDEPENDENT COUNSEL TO INSURED IN CERTAIN CASES; SELECTION AND COMPENSATION OF COUNSEL; WAIVER OF COUNSEL."

The hearing was called to order by Senator Felix P. Camacho, Chairman of the Committee on Tourism, Transportation and Economic Development. Members present included Vice Speaker Larry Kasperbauer and Senators Kaleo Moylan, Tom Ada, Mark Charfauros and Ben Pangelinan.

Present to testify were: Mr. Richard Reber, Mr. Wayne Rideout, Mr. John E. Moore and Mr. Lawrence Teker.

**II. TESTIMONY**

**Mr. Richard Reber**, the chairman of the Insurance Association of Guam, testified in favor of Bill No. 90. He said the insurance association has unanimous support of the measure and referenced an April letter that he sent to Speaker Antonio Unpingco.

**Mr. Wayne Rideout**, representing AON Insurance Micronesia (Guam) Inc., appeared for testimony on the measure. He said it was "the right was to go" and indicated that Bill No. 90 will lead to equity in the insurance industry.

**Attorney John Moore**, representing Pacific Indemnity, testified in favor of the bill. He said he supports Bill No. 90 for several reasons. He said the measure will eliminate uncertainty concerning the right of an insured to select independent counsel in those cases where a genuine conflict of interest arises between the insured and his insurance company. He also said it will require the insurance company to pay the legal fees generated by independent counsel in cases involving a legitimate conflict of interest. He indicated that it will relieve the insurance company from the obligation to pay for independent counsel and will eliminate abuses in some cases.

**Attorney Lawrence Teker**, representing Teker, Civile and Torres also testified in favor of the bill. He said Bill No. 90 follows California law and is fair to all sides involved in the insurance industry. Teker said this will be something that judges will not have to decide. He said now it will be set in the law. Because of this, Teker said he fully supports the passage of the bill.

### **III. FINDINGS**

The Committee finds that Bill No. 90 (LS) will eliminate the uncertainty concerning the rights of insured parties and insurers following a claimed loss and during the claims process. This includes the right of an insured to select independent counsel when a conflict of interest arises between the insured and insurer together with the obligation of the insurer to pay for such legal services.

### **IV. RECOMMENDATIONS**

The Committee on Tourism, Transportation and Economic Development hereby reports out Bill No. 90 (LS) with the recommendation ***TO DO PASS***.



# EQUITABLE ADJUSTING & SERVICE COMPANY

MEMBER OF  MOYLAN'S INSURANCE COMPANIES

101 AGANA SHOPPING CENTER • AGANA, GUAM 96910  
PHONE: (671) 477-8574 / 8490 • FAX: (671) 477-1837

June 18, 2001

The Honorable Senator Felix P. Camacho  
Chairman  
Committee on Tourism, Transportation a& Economic Development  
Twenty-sixth Guam Legislature  
Suite 15-B-777 Route 4  
Sinajana, Guam 96926

Re : *Bills 90 & 94*

Dear Honorable Senator Camacho:

We commend all the good senators with great ideas who sponsored these Bills 90 & 94 to implement law and order to regulate the insurance industry on Guam.

On behalf of Equitable Adjusting & Service Company, we appreciate this opportunity to present our comments and suggestions to the proposed amendments. We agree with the ideas to regulate promptness on claims handling in the insurance industry.

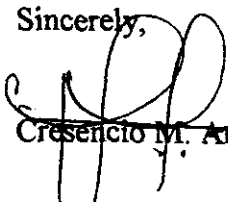
**Section 12310:** Unfair Claims Settlement Practices, 1) Reasonable standards for the prompt investigations of claims arising under the insurance policies: (promptly or reasonably is quite restrictive.) Would suggest 60 days to include time needed to investigate the claims.

**Section 15710:** Insurance Adjusters. It is suggested that off-island adjusters should be controlled by the government authorities and be required to register and be licensed locally before they are allowed to do business on island. This is to ensure that they pay their GRT from the income they derived while conducting business on island.

**Section 18602:** Willful Act or negligence of Insured. This section should be revised. The inclusion of "Negligence" for the insurance carrier to deny coverage is against public interest. Negligence is unforeseen action that is not intended to cause injury or property damages and will not be construed as willful act to bar recovery. Agree with "willful act or intentional act" of the insured.

Thank you for giving us a chance to present our comments.

Sincerely,



Cresencio M. Anas



- American Home Assurance Company
- CGU International Insurance P/C
- Chung Kuo Insurance Company, Ltd.
- Dai-Tokyo Fire & Marine Company, Ltd.
- Dongbu Insurance Company
- Firstnet Insurance Company
- National Union Fire Insurance Company
- New Hampshire Insurance Company
- Nichido Fire & Marine Insurance Co., Ltd.
- Pacific Indemnity Insurance Company
- QBE Insurance (International) Ltd.
- Tokio Marine & Fire Insurance Company
- Zurich Insurance (Guam), Inc.

OFFICERS:

Richard Reber  
 Chairman  
 (671) 477-1663/4

Ray Schnabel  
 Vice-Chairman  
 (671) 477-9808

Monique R. Baysingar  
 Secretary/Treasurer  
 (671) 477-1663/4

April 10, 2001

The Honorable Antonio R. Unpingco  
 Speaker  
 Twenty-Sixth Guam Legislature  
 155 Hesler Street  
 Hagåtña, Guam 96910

Post-it® brand fax transmittal memo 7671 # of pages = 1

To	SENATOR - CHAIRMAN	From	RICHARD REBER
Co.	FELIX CAMBERO	Co.	INS. ASSOC. OF GUAM
Dept.	26TH GUAM LEGISLATURE	Phone #	477-8801
		Fax #	477-6290
			Fax # 472-3534

Re: Proposed Legislation

Dear Mr. Speaker,

It has come to our attention that legislation has been proposed that would clarify and define the rights and duties between insurance companies, their clients and the attorney for both, when a possible conflict of interests arises between the party(s).

The proposed legislation mirrors Section 2860 of the California Civil Code. This section was enacted to address exactly the same problem that we have here, and successfully eliminated the confusion and abuses, on both sides, in consumer/insurance company/attorney disputes over their respective duties when involved in a lawsuit.

A copy of the proposed legislation is attached for your reference. The association heartily endorses this bill in its present form, and wanted to formally advise you of our support of its passage. Your favorable view and help towards that end would be greatly appreciated.

Thank you for your consideration in this matter.

Sincerely,

Richard R. Reber, II  
 Chairman

cc: John E. Moore, Esq.  
 Robert Greenwell

*9/13/01*

*25*

*6*

**JTE SAIS NA LIHESLATURAN GUAHAN**  
2001 (FIRST) Regular Session

Date: 9/14/01

**VOTING SHEET**

*5)*

Res. \_\_\_\_\_

Questio. \_\_\_\_\_

<u>NAME</u>	<u>YEAS</u>	<u>NAYS</u>	<u>NOT VOTING/ ABSTAINED</u>	<u>OUT DURING ROLL CALL</u>	<u>ABSENT</u>
ADA, Joseph F.	✓				
ADA, Thomas C.	✓				
AGUON, Frank B., Jr.	✓				
BROWN, Joanne M. S.	✓				
CALVO, Eddie B.	✓				
CAMACHO, Felix P.	✓				
CHARFAUROS, Mark C.	✓				
FORBES, Mark	✓				
KASPERBAUER, Lawrence F.	✓				
LEON GUERRERO, Lourdes A.	✓				
MOYLAN, Kaleo S.			<i>✓ excused</i>		
PANGELINAN, Vicente C.	✓				
SANTOS, Angel L.G.	✓				
UNPINGCO, Antonio R.	✓				
WON PAT, Judith T.	✓				

TOTAL                      14    0    1    0    0

CERTIFIED TRUE AND CORRECT:

\_\_\_\_\_  
Clerk of the Legislature

\* 3 Passes = No vote  
EA = Excused Absence



1 (b) *I Liheslaturan Guahan* finds that there is a need to define the  
2 duty of an insurer to provide independent counsel for its  
3 insured when an insurer reserves its rights as to coverage  
4 under a policy of insurance and to define the advent of a  
5 conflict of interest which requires that the insured be  
6 permitted to select independent counsel whose legal fees are  
7 paid by the insurer.

8 (c) *I Liheslaturan Guahan* finds that there is a need to address the  
9 issues of denial of coverage by an insurer, claims in excess of  
10 policy limits and/or claims for punitive damages.

11 (d) *I Liheslaturan Guahan* finds that there is a need to determine  
12 the qualifications of independent counsel selected by the  
13 insured and the compensation of such counsel by the insurer  
14 in order to assure adequate representation and to avoid  
15 excessive or fraudulent billings for legal services provided by  
16 independent counsel.

17 (e) *I Liheslaturan Guahan* finds that there is a need to ensure  
18 protection of the attorney-client privilege in the context of  
19 independent counsel for insureds arising from conflict of  
20 interest.

21 (f) *I Liheslaturan Guahan* finds that there is a need to provide for  
22 resolution of attorney fee disputes and waiver of counsel.

23 **Section 2.** Section 12111 is hereby *added* to Chapter 12 of Division 2 of  
24 Title 22 of the Guam Code Annotated to read as follows:

1 "Section 12111. Conflicts of interest; Duty of insurer to provide  
2 independent counsel for insured under a reservation of rights;  
3 Limitations on the duty to provide independent counsel;  
4 Selection and compensation of counsel; Arbitration of fee  
5 disputes; Duty to disclose to and consult with the insurer; No  
6 duty to disclose material relating to coverage issues; Attorney-  
7 client privilege extended to material disclosed to the insured or  
8 its counsel; Waiver of right to independent counsel; Right of  
9 independent counsel to participate in litigation; Insured not  
10 relieved of duty to cooperate with insurer under the provisions  
11 of the insurance contract.

12 (a) If the provisions of a policy of insurance impose  
13 a duty to defend upon an insurer and a conflict  
14 of interest arises which creates a duty on the part  
15 of the insurer to provide independent counsel to  
16 the insured, the insurer shall provide  
17 independent counsel to represent the insured  
18 unless, at the time the insured is informed that a  
19 possible conflict may arise or does exist, the  
20 insured expressly waives, in writing, the right to  
21 independent counsel. An insurance contract  
22 may contain a provision which sets forth the  
23 method of selecting independent counsel  
24 consistent with this section.

1 (b) For purposes of this section, a conflict of interest  
2 does not exist as to all allegations or facts in the  
3 litigation for which the insurer denies coverage;  
4 however, when an insurer reserves its rights on a  
5 given issue and the outcome of that coverage  
6 issue can be controlled by counsel first retained  
7 by the insurer for the defense of the claim, a  
8 conflict of interest may exist. No conflict of  
9 interest shall be deemed to exist as to allegations  
10 of punitive damages or be deemed to exist solely  
11 because an insured is sued for an amount in  
12 excess of the insurance policy limits.

13 (c) When the insured has selected independent  
14 counsel to represent him or her, the insurer may  
15 exercise its right to require that the counsel  
16 selected by the insured possess certain minimum  
17 qualifications which may include that the  
18 selected counsel have (1) at least five years in  
19 civil litigation practice which includes  
20 substantial defense experience in the subject at  
21 issue in the litigation, and (2) errors and  
22 omissions coverage. The insurer's obligation to  
23 pay fees to the independent counsel selected by  
24 the insured is limited to the rates which are a

1 actually paid by the insurer to attorneys retained  
2 by it in the ordinary course of business in the  
3 defense of similar actions in the community  
4 where the claim arose or is being defended. This  
5 subdivision does not invalidate other different or  
6 additional policy provisions pertaining to  
7 attorney's fees or providing methods of  
8 settlement of disputes concerning those fees.  
9 Any dispute concerning attorney's fees not  
10 resolved by these methods shall be resolved by  
11 final and binding arbitration by a single neutral  
12 arbitrator selected by the parties to the dispute.  
13 In the event that the parties cannot agree on the  
14 selection of a neutral arbitrator, then upon  
15 petition of any party to the dispute, the Superior  
16 Court of Guam shall designate a neutral  
17 arbitrator.

- 18 (d) When independent counsel has been selected by  
19 the insured, it shall be the duty of that counsel  
20 and the insured to disclose to the insurer all  
21 information concerning the action except  
22 privileged materials relevant to coverage  
23 disputes, and timely to inform and consult with  
24 the insurer on all matters relating to the action.

1 Any claim of privilege asserted is subject to in  
2 camera review by the Superior Court of Guam.  
3 Any information disclosed by the insured or by  
4 independent counsel is not a waiver of the  
5 privilege as to any other party, person, or legal  
6 entity.

7 (e) The insured may waive its rights to select  
8 independent counsel by signing the following  
9 statement: "I have been advised and informed of  
10 my right to select independent counsel to  
11 represent me in this lawsuit. I have considered  
12 this matter fully and freely waive my right to  
13 select independent counsel at this time. I  
14 authorize my insurer to select a defense attorney  
15 to represent me in this lawsuit.

16 (f) Where the insured selects independent counsel  
17 pursuant to the provisions of this section, both  
18 the counsel provided by the insurer and  
19 independent counsel selected by the insured  
20 shall be allowed to participate in all aspects of  
21 the litigation. Counsel shall cooperate fully in  
22 the exchange of information that is consistent  
23 with each counsel's ethical and legal obligation  
24 to the insured. Nothing in this section shall

1  
2  
3

relieve the insured of his or her duty to cooperate with the insurer under the provisions of the insurance contract.”



THE OFFICE OF  
**Senator Felix P. Camacho**  
TWENTY-SIXTH GUAM LEGISLATURE

**Public Hearing**  
**10 a.m. Tuesday, June 19, 2001**

**AGENDA**

- I. Call to Order
- II. Announcement and Introduction of Members
- III. Confirmation Hearing: Francisco Q. Taitano to the Guam International Airport Authority Board of Directors
- IV. Legislative Measure: BILL NO. 83 Guam Raceway Park
- V. Legislative Measure: BILL NO. 90 Insurance Conflicts
- VI. Legislative Measure: BILL NO. 94 Insurance Laws on Guam
- VII. Remarks
- VIII. Adjournment



THE OFFICE OF  
**Senator**  
**Felix P. Camacho**  
 TWENTY-SIXTH GUAM LEGISLATURE  
 Suite 15B • 777 Route 4 • Sinajana, Guam 96926 • Phones 1.671 472-3544 / 45 / 46 • Fax 1.671 472-3534

# TESTIMONY SIGN-IN SHEET

COMMITTEE ON TOURISM, TRANSPORTATION  
 AND ECONOMIC DEVELOPMENT

## Bill No. 90 Insurance Conflicts of Interest

NAME : RICHARD REBER	ORGANIZATION : Chairman of the INSURANCE ASSOCIATION
CONTACT : 477-8801	MAILING ADDRESS : P.O. BOX 2082 MAGATNA GUAM
NAME : Philip Mallia	ORGANIZATION : QBE INSURANCE (INTERNATIONAL) LIMITED
CONTACT : 635 2823	MAILING ADDRESS : 674 HARMON LOOP RD, Suite 215 DEDEDO.
NAME : Wayne Riseout	ORGANIZATION : Aon Insurance Micronesia (Guam)
CONTACT : 649 8016	MAILING ADDRESS : 278 SOUTH MARINE AVE TAMUNINGA.
NAME : John E. Moore	ORGANIZATION : Pacific Indemnity
CONTACT : on Guam 477-8708 541 386-2013	MAILING ADDRESS : 2158 W. Sherman Ave, Blond River OK 87031
NAME : LAWRENCE TEKER	ORGANIZATION : TEKER, CIVILLE, TORRES
CONTACT : 477-9891	MAILING ADDRESS : 330 HERNAN CORTES AGANA
NAME :	ORGANIZATION :
CONTACT :	MAILING ADDRESS :
NAME :	ORGANIZATION :
CONTACT :	MAILING ADDRESS :



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2458 West Sherman Avenue  
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Tel. (541) 386-2073  
Fax (541) 386-6825

June 14, 2001

Senator Felix P. Camacho  
Chairman, Committee on Tourism,  
Transportation and Finance  
Twenty-Sixth Guam Legislature  
Suite 158, 777 Route 4  
Sinajania, Guam 96926

RE: Senate Bill 90 (LS)

Dear Senator Camacho:

This letter is written in support of Senate Bill 90 (LS), which is scheduled for hearing on Tuesday, June 19, 2001, before the Committee on Tourism, Transportation and Finance.

By way of introduction, I have been a member of the Guam Bar Association since 1977, and have practiced law on Guam for more than twenty five years. During that time, I worked with litigation matters including many insurance defense cases. In that regard, I have been aware for some time of certain problems existing on Guam in connection with conflicts of interest arising between an insured and his insurance company.

When a legitimate conflict of interest arises in connection with insurance litigation where the outcome of a coverage issue can be controlled by counsel first selected and retained by the insurance company, the law generally recognizes that the insurance company has an obligation to pay for independent counsel selected by the insured to represent his interests in that litigation. Problems have arisen, however, when a conflict of interest is asserted merely because a claim for punitive damages has been alleged, or where a conflict of interest is said to have arisen only because the claim asserted is in excess of policy limits. In the case of punitive damages, the insurance company should not be required to pay for independent counsel for the simple reason that it has no duty to pay a loss caused by the willful act of an insured 22 GCA §18602. Similarly, an insurance company should not be required to pay for independent counsel simply because a claim is in excess of policy limits. All of us make decisions concerning the amount of insurance

coverage purchased. The insurance company should not be obligated to pay for legal services not covered by the insurance contract. The insurance company should also not be required to pay for independent counsel in those cases where it simply denies coverage, as opposed to the situation where the company agrees to defend the case but reserves the right to contest coverage at a later time. In such cases, counsel first retained by the insurance company has no conflict of interest since the coverage issue has been resolved by the denial of coverage.

Other problems have arisen in connection with the payment of fees generated by independent counsel selected by the insured. Excessive hourly rates have been charged and "make work" billings have been generated when they were clearly not required by the litigation at hand. Instances have also arisen where counsel selected by an insured simply lacks the professional experience and qualifications required to defend a complex insurance case. Problems have also surfaced in terms of the level of cooperation existing between the insured, his attorney and the insurance company. Obviously, an effective defense is not possible without the cooperation of the insured and his lawyer.

This brief recital of the problems existing illustrates the need for legislative action. The retention of independent counsel in those cases where none is required, and unnecessary and excessive billings simply multiply litigation costs which in turn generate higher premium rates - an increased expense that can ill be afforded by Guam consumers given the existing economic situation. Senate Bill 90 (LS), which largely mirrors § 2860 of the California Civil Code, enacted in 1987 to combat these same problems, has been proven in actual use and will provide much needed relief.

In summary, I support Senate Bill 90 (LS) for the following reasons:

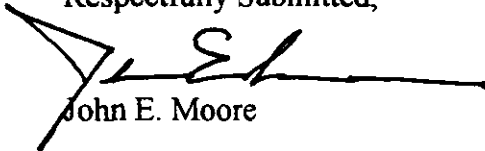
- It will eliminate uncertainty concerning the right of an insured to select independent counsel in those cases where a genuine conflict of interest arises between the insured and his insurance company.
- It will require the insurance company to pay the legal fees generated by independent counsel in cases involving a legitimate conflict of interest.
- It relieves the insurance company from the obligation to pay for independent counsel in those cases where coverage has been denied, thus avoiding any conflict of interest on the part of the attorney first retained by the insurance company.
- It will eliminate abuses arising from situations where a conflict of interest has been asserted based only upon a claim for punitive damages or because the claim asserted is in excess of policy limits.

Letter to Senator Felix P. Camacho, dated June 14, 2001, p. 3

- It will prevent abusive fee billing practices by limiting the fees charged by independent counsel to the same rates paid by the insurance company for similar work where the claim arose or is being defended.
- It will require the insured and independent counsel selected by him to cooperate with the insurance company in defending the action, while at the same time protecting the attorney-client privilege concerning coverage issues.

Senate Bill 90 (LS) represents a fair and even handed approach to the conflict of interest problem and provides adequate representation for an insured in legitimate conflict situations. I strongly support its passage.

Respectfully Submitted,



John E. Moore

**MINA'BENTE SAIS NA LIHESLATURAN GUÅHAN**  
**2001 (FIRST) Regular Session**

Bill No. 90 (LG)

Introduced by:

A. R. Unpingco  
F.P. CAMACHO  
M. FERREZ

**AN ACT TO ADD §12111 TO ARTICLE 1, CHAPTER 12, DIVISION 2 OF TITLE 22 OF THE GUAM CODE ANNOTATED, RELATIVE TO CONFLICTS OF INTEREST BETWEEN THE INSURER AND INSURED; DUTY OF INSURER TO PROVIDE INDEPENDENT COUNSEL TO INSURED IN CERTAIN CASES; SELECTION AND COMPENSATION OF COUNSEL; WAIVER OF COUNSEL.**

1           **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2           **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*  
3 finds that there is a need to eliminate uncertainty concerning the rights of  
4 insured parties and insurers following a claimed loss and during the claims  
5 process. This includes the following concerns:

6           (a) *I Liheslaturan Guahan* finds that there is a need to eliminate  
7 uncertainty concerning the right of an insured to select  
8 independent counsel when a conflict of interest arises  
9 between insured and insurer together with the obligation of  
10 the insurer to pay for such legal services.

1 (b) *I Liheslaturan Guahan* finds that there is a need to define the  
2 duty of an insurer to provide independent counsel for its  
3 insured when an insurer reserves its rights as to coverage  
4 under a policy of insurance and to define the advent of a  
5 conflict of interest which requires that the insured be  
6 permitted to select independent counsel whose legal fees are  
7 paid by the insurer.

8 (c) *I Liheslaturan Guahan* finds that there is a need to address the  
9 issues of denial of coverage by an insurer, claims in excess of  
10 policy limits and/or claims for punitive damages.

11 (d) *I Liheslaturan Guahan* finds that there is a need to determine  
12 the qualifications of independent counsel selected by the  
13 insured and the compensation of such counsel by the insurer  
14 in order to assure adequate representation and to avoid  
15 excessive or fraudulent billings for legal services provided by  
16 independent counsel.

17 (e) *I Liheslaturan Guahan* finds that there is a need to ensure  
18 protection of the attorney-client privilege in the context of  
19 independent counsel for insureds arising from conflict of  
20 interest.

21 (f) *I Liheslaturan Guahan* finds that there is a need to provide for  
22 resolution of attorney fee disputes and waiver of counsel.

23 **Section 2.** Section 12111 is hereby *added* to Chapter 12 of Division 2 of  
24 Title 22 of the Guam Code Annotated to read as follows:

1           **“Section 12111. Conflicts of interest; Duty of insurer to provide**  
2           **independent counsel for insured under a reservation of rights;**  
3           **Limitations on the duty to provide independent counsel;**  
4           **Selection and compensation of counsel; Arbitration of fee**  
5           **disputes; Duty to disclose to and consult with the insurer; No**  
6           **duty to disclose material relating to coverage issues; Attorney-**  
7           **client privilege extended to material disclosed to the insured or**  
8           **its counsel; Waiver of right to independent counsel; Right of**  
9           **independent counsel to participate in litigation; Insured not**  
10           **relieved of duty to cooperate with insurer under the provisions**  
11           **of the insurance contract.**

12                   (a) If the provisions of a policy of insurance impose  
13                   a duty to defend upon an insurer and a conflict  
14                   of interest arises which creates a duty on the part  
15                   of the insurer to provide independent counsel to  
16                   the insured, the insurer shall provide  
17                   independent counsel to represent the insured  
18                   unless, at the time the insured is informed that a  
19                   possible conflict may arise or does exist, the  
20                   insured expressly waives, in writing, the right to  
21                   independent counsel. An insurance contract  
22                   may contain a provision which sets forth the  
23                   method of selecting independent counsel  
24                   consistent with this section.

1 (b) For purposes of this section, a conflict of interest  
2 does not exist as to all allegations or facts in the  
3 litigation for which the insurer denies coverage;  
4 however, when an insurer reserves its rights on a  
5 given issue and the outcome of that coverage  
6 issue can be controlled by counsel first retained  
7 by the insurer for the defense of the claim, a  
8 conflict of interest may exist. No conflict of  
9 interest shall be deemed to exist as to allegations  
10 of punitive damages or be deemed to exist solely  
11 because an insured is sued for an amount in  
12 excess of the insurance policy limits.

13 (c) When the insured has selected independent  
14 counsel to represent him or her, the insurer may  
15 exercise its right to require that the counsel  
16 selected by the insured possess certain minimum  
17 qualifications which may include that the  
18 selected counsel have (1) at least five years in  
19 civil litigation practice which includes  
20 substantial defense experience in the subject at  
21 issue in the litigation, and (2) errors and  
22 omissions coverage. The insurer's obligation to  
23 pay fees to the independent counsel selected by  
24 the insured is limited to the rates which are a

1 actually paid by the insurer to attorneys retained  
2 by it in the ordinary course of business in the  
3 defense of similar actions in the community  
4 where the claim arose or is being defended. This  
5 subdivision does not invalidate other different or  
6 additional policy provisions pertaining to  
7 attorney's fees or providing methods of  
8 settlement of disputes concerning those fees.  
9 Any dispute concerning attorney's fees not  
10 resolved by these methods shall be resolved by  
11 final and binding arbitration by a single neutral  
12 arbitrator selected by the parties to the dispute.  
13 In the event that the parties cannot agree on the  
14 selection of a neutral arbitrator, then upon  
15 petition of any party to the dispute, the Superior  
16 Court of Guam shall designate a neutral  
17 arbitrator.

- 18 (d) When independent counsel has been selected by  
19 the insured, it shall be the duty of that counsel  
20 and the insured to disclose to the insurer all  
21 information concerning the action except  
22 privileged materials relevant to coverage  
23 disputes, and timely to inform and consult with  
24 the insurer on all matters relating to the action.



1 Any claim of privilege asserted is subject to in  
2 camera review by the Superior Court of Guam.  
3 Any information disclosed by the insured or by  
4 independent counsel is not a waiver of the  
5 privilege as to any other party, person, or legal  
6 entity.

7 (e) The insured may waive its rights to select  
8 independent counsel by signing the following  
9 statement: "I have been advised and informed of  
10 my right to select independent counsel to  
11 represent me in this lawsuit. I have considered  
12 this matter fully and freely waive my right to  
13 select independent counsel at this time. I  
14 authorize my insurer to select a defense attorney  
15 to represent me in this lawsuit.

16 (f) Where the insured selects independent counsel  
17 pursuant to the provisions of this section, both  
18 the counsel provided by the insurer and  
19 independent counsel selected by the insured  
20 shall be allowed to participate in all aspects of  
21 the litigation. Counsel shall cooperate fully in  
22 the exchange of information that is consistent  
23 with each counsel's ethical and legal obligation  
24 to the insured. Nothing in this section shall

1                   relieve the insured of his or her duty to  
2                   cooperate with the insurer under the provisions  
3                   of the insurance contract.”