

Fordham Environmental Law Review

Volume 8, Number 1

2011

Article 12

ABA Manual For Complex Insurance Coverage Litigations: A Prescription for Efficient, Cost Effective And Manageable Litigation: A Reply

John D. Shugrue*

Donald W. Brown†

John G. Buchanan III‡

R. Brooke Jackson**

*

†

‡

**

ABA MANUAL FOR COMPLEX INSURANCE COVERAGE LITIGATION: A PRESCRIPTION FOR EFFICIENT, COST EFFECTIVE AND MANAGEABLE LITIGATION

A Reply

*John D. Shugrue, Esq.,
Donald W. Brown, Esq.,
John G. Buchanan III, Esq.,
R. Brooke Jackson, Esq.,
the Honorable William F. Lanam,
James P. Schaller, Esq., and
Irene A. Sullivan, Esq.**

INTRODUCTION

Complex insurance coverage litigation has been one of the most hotly contested and fastest growing areas of civil litigation in the United States over the last two decades. During this period, corporate America has faced massive liability for asbestos-related property damage and disease, environmental cleanup, and remediation under federal and state laws, and mass tort claims relating to defective drugs and products. As a result, disputes between policyholders and their insurers have become all too commonplace, as policyholders attempt to reign in funds from all available sources to mitigate exposure to liability.

Much of the insurance coverage litigation that has emerged during the last twenty years has been characterized by several factors: (1) multiple parties (typically a large number of insurance compa-

* By John D. Shugrue, Esq., Jenner & Block; Donald W. Brown, Esq., Brobeck, Phleger & Harrison LLP; John G. Buchanan III, Esq., Covington & Burling; R. Brooke Jackson, Esq., Holland & Hart LLP; the Honorable William F. Lanam, Judges and Attorneys Resolution Service, Inc.; James P. Schaller, Esq., Jackson & Campbell; and Irene A. Sullivan, Esq., Skadden, Arps, Slate, Meagher & Flom.

John D. Shugrue was a co-chair of the American Bar Association Complex Insurance Coverage Litigation Manual Task Force. Donald W. Brown, John G. Buchanan, III, R. Brooke Jackson, William F. Lanam, James P. Schaller, and Irene A. Sullivan were members of the Task Force.

nies);¹ (2) events spanning years or decades;² and (3) large volumes of documents and large numbers of witnesses having arguably relevant information about the dispute.³ The most complicated of these insurance coverage disputes have lasted many years and consumed tremendous resources from the parties, their counsel, and the courts faced with adjudicating the disputes.

As the number, size, and complexity of insurance coverage cases has grown, both insurer and policyholder counsel have recognized the need to identify and develop specialized case management techniques to improve the ability of the parties, their lawyers, and the courts to handle these cases fairly, efficiently, and cost-effectively. One organized effort to address these issues recently was undertaken by a bi-partisan task force of insurer and policyholder lawyers, operating under the auspices of the Insurance Coverage Litigation Committee of the American Bar Association's ("ABA") Section of Litigation.⁴ The result of the Task Force's work was the publication of the *Manual for Complex Insurance Coverage Litigation* in 1993.⁵ The stated goal of the MANUAL is to "promote

1. See, e.g., *In re Asbestos Litig.*, 90 F.3d 963 (5th Cir. 1996) (litigation involving 34 parties); *New Castle County v. Hartford Accident & Indem. Co.*, 933 F.2d 1162 (3d Cir. 1991) (litigation involving over 13 parties); *Pittston Co. v. Allianz Ins. Co.*, 905 F. Supp. 1279 (D.N.J. 1995) (litigation involving over 10 parties).

2. See, e.g., *American Policy Holders Ins. Co. v. Nycol Prods.*, 989 F.2d 1256 (1st Cir. 1993) (CERCLA litigation involving toxic waste spillage spanning from 1917 to 1977); *Pittston*, 905 F. Supp. 1279 (litigation over fuel oil spillage allegedly occurring since 1911); *Outboard Marine Corp. v. Liberty Mutual Ins. Co.*, 670 N.E.2d 1204 (Ill. 1992) (litigation involving the release of PCBs over a twenty year period).

3. See Jeffrey M. Eilender, *Forum Non-Conveniens and Comprehensive Hazardous Waste Coverage Suits*, 90 COLUM. L. REV. 1066, 1075 (1990); Stephen R. Guilford, *Insurance Coverage Actions: Who, Where, and When to Sue*, 18 W. NEW ENG. L. REV. 123, 147-52 (1996).

4. Like the Task Force, the Committee is a bi-partisan organization co-chaired by representatives of both insurers and policyholders. Some of the most active and highly regarded litigators for both sides have participated actively in the Committee's work, including the Task Force.

5. A revised and updated version of the manual was published in 1995 by Aspen Law & Business. See generally MANUAL FOR COMPLEX INSURANCE COVERAGE LITIGATION (Task Force of the Comm. on Ins. Coverage Litig., Am. Bar Ass'n, Section on Litig. 1995) [hereinafter MANUAL]. All references to the MAN-

effective case management by the court, counsel and parties in pending and future [complex insurance coverage] cases.”⁶

The MANUAL recently was criticized in an Article written by Eugene R. Anderson, Edward M. Joyce, and John P. Gasior,⁷ entitled *ABA Manual for Complex Insurance Coverage Litigation: A Prescription for Insurance Nullification* (“*Insurance Nullification*”).⁸ Among other things, *Insurance Nullification* accuses the MANUAL of presenting case management strategies which promote insurance company interests.⁹

This Article has been authored by Task Force members as a response to the criticism found in *Insurance Nullification*. Part I of this Article will explain in greater detail the purpose and approach of the MANUAL. Part II will address some of the specific criticisms leveled by *Insurance Nullification*. In particular, Part II will argue that the *Insurance Nullification* authors misperceive the purpose and approach of the MANUAL and misstate the substance and contents of the MANUAL in several material respects. This Article concludes by showing that the authors of *Insurance Nullification* erroneously attribute an anti-policyholder bias to the MANUAL by ignoring the context in which the MANUAL was written.

I. THE GOALS AND APPROACH OF THE MANUAL

The MANUAL was prepared by the Task Force of the Insurance Coverage Litigation Committee of the ABA Section of Litigation.¹⁰ The Task Force was comprised of a bi-partisan group of ten insurer and ten policyholder attorneys, representing many of the leading insurance coverage litigation firms in the country.¹¹ The

UAL in this Article will be to the 1995 edition.

6. *Id.* at xi.

7. Eugene R. Anderson, Edward M. Joyce, & John P. Gasior are members of the law firm of Anderson Kill & Olick, P.C. The firm regularly represents policyholders in insurance coverage disputes.

8. Eugene R. Anderson et al., *A.B.A. Manual for Complex Insurance Coverage Litigation: A Prescription for Insurance Nullification*, 7 *FORDHAM ENVTL. L. J.* 55 (1995) [hereinafter *Insurance Nullification*].

9. *Id.* at 59 (“An anti-policyholder bias is reflected throughout the Manual.”). See *id.* at 69-70, 73.

10. MANUAL, *supra* note 5, at xi.

11. *Id.* at xix-xx.

Task Force was joined by Judge Marvin Aspen of the United States District Court for the Northern District of Illinois.¹² The Task Force also was joined by Judge William F. Lanam,¹³ a retired California state court judge who presided over the *Shell Oil* environmental insurance coverage case, one of the first and largest environmental coverage cases in the United States.¹⁴

The mandate of the Task Force from the outset was to develop certain case management alternatives that could be used to promote efficient, cost effective, and fair resolution of complex insurance coverage disputes. The insurer and policyholder attorney members of the Task Force were adversaries in an area of hotly contested and vigorously disputed law. However, they put their differences aside in order to develop methods for better managing complex insurance coverage cases.¹⁵

The MANUAL is the result of years of meetings, discussions, and drafting efforts by the Task Force.¹⁶ The MANUAL deals with procedural issues relating to case management, rather than substantive legal issues.¹⁷ The MANUAL does not and is not intended to advo-

12. *Id.* at xix.

13. *Id.*

14. See generally *Shell Oil Co. v. Winterthur Swiss Ins. Co.*, 15 Cal. Rptr. 2d 815 (Ct. App. 1993). The *Shell Oil* litigation involved a dispute between Shell Oil and its insurers over the cost of a \$2 billion environmental cleanup in Denver, Colorado. Marianne Lavelle, *Industry, Insurers at Odds-At Stake: Who Will Pay for Superfund Cleanups*, NAT'L L. J., Mar. 30, 1992, at 1. The case involved a fourteen month trial and the taking of 232 depositions within a one year period. *Id.*

15. MANUAL, *supra* note 5, at xi ("This Manual is the product of [the authors'] *joint* efforts and is based, not on the laws of a particular jurisdiction or a particular case management approach, *but on the sum of their practical experiences.*") (emphasis added); *id.* at xvii ("This Manual was written in a spirit of cooperation and respect among adversaries.").

16. *Id.* at ix.

17.

We have attempted to identify, discuss and occasionally recommend case management procedures that have been applied in past complex insurance coverage cases as well as several procedures that may be new. Our goal is simply to promote effective case management by the court, counsel and parties in pending and future cases.

Id. at xi; see also *id.* at xvii ("[The Manual] is not designed to comment on any substantive coverage issues.").

cate any litigation position on behalf of either insurer or policyholder, nor does it advocate efficiency over fairness.¹⁸

In keeping with these fundamental tenets, the MANUAL proposes flexible approaches to achieving the goals of fairness and efficiency in complex coverage litigation.¹⁹ On most issues, the MANUAL merely identifies a range of case management alternatives that may be appropriate under the circumstances of different cases.²⁰ It does not advocate particular approaches to be taken in every case, nor does it attempt to establish hard-and-fast rules to be followed in every case.²¹

18. *See id.* at vii (the Manual reflects the authors' "attempts to offer ideas designed to improve a portion of the adversary system, by making complex coverage litigation more efficient and *fairer*." (emphasis added); *id.* § 3.01(a) ("Although [the Manual] emphasizes efficiency in the discovery process, it is not intended to recommend efficiency at the expense of fairness.").

19. The MANUAL offers a variety of suggestions to be considered by courts and insurance coverage litigants, rather than a formulaic plan for case management:

Even in [insurance] coverage cases that present ostensibly similar issues, no single case management plan can suffice, because the facts, applicable law, quantity and nature of material evidence, and the resources available to the Court and the parties - all factors crucial to case management - vary from case to case In recognition of this fact, this Manual is designed primarily to identify issues and procedures that the litigants and the Court *should consider* as they work together toward effective case management.

Id. at xvi (emphasis added).

20. *See, e.g., id.* § 2.04(d) (providing five examples of co-counsel committee formats which have proven useful in past insurance coverage cases); *id.* § 4.02(b) (suggesting seven different alternatives for the reduction of paper submitted in conjunction with motions); *id.* § 6.02(a) (listing eleven potential benefits and problems associated with trying multiple insurance coverage claims in one trial).

21. *See, e.g., id.* § 3.04(e) ("Variations within the above scheme [to eliminate unnecessary depositions] *might* include the following . . .") (emphasis added); *id.* § 3.04(j) ("Some *suggested* ways to avoid [problems in handling witnesses in depositions] are as follows . . .") (emphasis added); *id.* § 4.03(c)(ii) ("[An inquiry into] the meaning of the relevant terms of the [insurance] contract, *may* implicate the following categories of facts, depending upon the applicable law . . .") (emphasis added).

II. PARTICULAR CRITICISMS OF *INSURANCE NULLIFICATION*

Throughout their Article, the authors of *Insurance Nullification* accuse the MANUAL of endorsing particular positions in order to promote the interests of insurance companies.²² However, *Insurance Nullification* rests this criticism on mischaracterizations of the text of the MANUAL and misapprehensions about the nature and purpose of the MANUAL.

A. *Scope of Comprehensive General Liability Coverage*

Insurance Nullification begins by incorrectly accusing the MANUAL and the ABA of attempting to "take away" the coverage afforded by comprehensive general liability ("CGL") insurance policies.²³ *Insurance Nullification* bases this attack on Section 1.07 of the MANUAL.²⁴

Section 1.07 is the concluding section of a chapter in the MANUAL which seeks only to "illustrate[] some basic features of common commercial insurance policies and programs" which may be relevant to "the case management discussions" in the MANUAL.²⁵ The

22. See *Insurance Nullification*, *supra* note 8, at 59 ("An anti-policyholder bias is reflected throughout the *Manual*."); *id.* ("The *Manual* addresses the[] four key issues in [insurance] litigation case management in a manner that unsatisfactorily places commercial policyholders at an unfair disadvantage."); *id.* at 60 ("The [*Manual*'s] 'discovery' protocol . . . is decidedly one-sided."); *id.* at 69 ("The *Manual* tacitly endorses two tactics commonly used by insurance companies. . .").

23. *Id.* at 59.

24. *Id.* ("Section 1.07 of the *Manual* suggests that, despite its name, the CGL policy does *not* provide comprehensive coverage The insurance industry promised policyholders 'comprehensive' coverage; the American Bar Association should not attempt to take it away.")

25. MANUAL, *supra* note 5, at 1-3. Section 1.07 states in relevant part: Commercial insurance claims and losses can be as complicated, wide-ranging and diverse as the policyholder's products, employees, property and operations. Coverage for a given claim or loss may turn upon the location, date, and conditions under which it occurred. The precise cause and circumstances of the claim or loss and the affiliation of the individuals and instrumentalities involved may be equally important in determining whether coverage is provided under a particular policy. Depending upon the case, a thorough understanding of the manufac-

introduction to the chapter instructs the reader to consider these features only when “structuring the management of complex insurance coverage case[s].”²⁶ This section addresses the handling of insurance claims generally; it makes no reference to the nature and scope of CGL coverage.²⁷ Inexplicably, *Insurance Nullification* excoriates this section as reflecting an “anti-policyholder bias” and suggesting that CGL coverage “does *not* provide comprehensive coverage.”²⁸

B. Case Management Issues

1. Discovery

Insurance Nullification next claims that the MANUAL’s discussion of discovery is “decidedly one-sided” in favor of insurers.²⁹ The MANUAL, however, addresses a wide range of discovery issues and discusses a variety of techniques that can be used to make the discovery process more efficient and cost-effective for *all parties*. The MANUAL, for example, examines possible methods of streamlining discovery, to the benefit of both insurers and policyholders, by (1) reducing document production burdens;³⁰ (2) eliminating unhelpful depositions;³¹ and (3) developing methods for avoiding or resolving predictable discovery disputes.³²

Insurance Nullification, ignoring the larger context and content of the MANUAL, isolates and subjects to assault a few suggestions by the MANUAL concerning discovery. Specifically, *Insurance Nullification* incorrectly states that the MANUAL “seems to suggest that discovery in prior cases should be used as a *substitute* to full dis-

turing processes, scientific principles and other technical information regarding the policyholder may be necessary to determine whether coverage is provided by the policy or policies at issue.

Id. § 1.07. See generally *id.* § 1.01-.07.

26. *Id.*

27. *Id.* § 1.07.

28. *Insurance Nullification*, *supra* note 8, at 59.

29. *Id.* at 60.

30. MANUAL, *supra* note 5, § 3.03(b).

31. *Id.* § 3.04(e).

32. *Id.* § 3.08(a).

covery in current insurance coverage disputes."³³ *Insurance Nullification* then claims that using discovery from prior cases "clearly favors insurance companies"³⁴

In fact, however, the MANUAL merely identifies discovery from prior cases as one element of discovery that may be useful in a current coverage action.³⁵ Moreover, while the MANUAL suggests that using discovery from prior cases should be "seriously considered" where it can be "used as a substitute for redundant deposition questioning or production of documents," nowhere does the MANUAL recommend that such discovery be used as a complete substitute for discovery in a pending action, or as a means for avoiding production of non-redundant discovery.³⁶

Insurance Nullification also claims that the MANUAL "implies that by delaying the policyholder's full discovery of all insurance companies, efficiency may be promoted," basing this claim on the MANUAL's discussion of substantive case phasing in Section 2.06(b).³⁷ However, *Insurance Nullification* ignores the MANUAL's statement that phasing based on the level or type of insurance coverage involved has been utilized where "the consent of [all] parties" is obtained.³⁸ Furthermore, *Insurance Nullification* fails to address the MANUAL's recommendation that phasing should be considered

33. *Insurance Nullification*, *supra* note 8, at 64.

34. *Id.*

35. See MANUAL, *supra* note 5, § 3.01(a) ("The MANUAL chapter on discovery "sets forth the *areas* of discovery requiring particular attention in complex insurance coverage cases and examines *different alternatives* for addressing these issues.") (emphasis added).

36. *Id.* § 3.01 ("Particular efficiencies *may* result in complex insurance coverage cases from the use of discovery taken in other cases. . . .") (emphasis added).

37. *Insurance Nullification*, *supra* note 8, at 60. Section 2.06(b) states in relevant part:

Some cases have been phased, with the consent of the parties, based upon the insurers' level of participation. For example, if the underlying claim or loss will not implicate high-level excess insurers, the parties may agree to delay discovery and consideration of any issues specific to these insurers until the amount of the claim or loss and the exhaustion, if any, of underlying layers is accurately quantified.

MANUAL, *supra* note 5, § 2.06(b).

38. MANUAL, *supra* note 5, § 2.06 (b)(6) & (8).

only where it would not “unduly impair[] the substantive position of either side.”³⁹

As section 2.06(b) makes clear, the MANUAL presents case phasing as one possible alternative that parties could adopt, by mutual agreement, for approaching complex insurance litigation.⁴⁰ The MANUAL does not recommend this approach for all cases, nor does it “advocate” the “withholding of critical documents by insurance companies.”⁴¹

2. Protective Orders

Insurance Nullification accuses the MANUAL of advocating “secrecy” in three areas of complex coverage cases: (1) position papers prepared by the parties; (2) third-party document productions; and (3) use of protective orders.⁴² The Article characterizes the MANUAL’s recommendation for confidentiality as a mechanism “[having] no place in insurance coverage litigation,” designed to “deprive future policyholders of the benefit of the discovery and litigation successes” achieved by past policyholder litigants.⁴³ To substantiate this criticism, *Insurance Nullification* again takes portions of the MANUAL out of context, refusing to directly address the stated purposes behind the MANUAL’s suggested confidentiality requirements.

The MANUAL recommends consideration of the use of informal position papers as a means for the parties to inform the court of the key factual and legal issues of a complex coverage case in its early stages.⁴⁴ The purpose of these position papers is to provide a mechanism for assisting the court in understanding the case and developing appropriate management techniques during these early stages, without the need for formal pleadings or discovery. The

39. *Id.* § 2.06.

40. *See id.* § 2.06(b) (“Following are types of substantive phasing that the parties may find useful in complex coverage cases.”).

41. *Insurance Nullification*, *supra* note 8, at 60. *See* MANUAL, *supra* note 5, § 2.06 (“Each of the phasing methods discussed below has been used successfully in past coverage cases, although none of them will be right for every case.”).

42. *Insurance Nullification*, *supra* note 8, at 66.

43. *Id.*

44. MANUAL, *supra* note 5, § 2.02(b).

MANUAL suggests that such position papers be designated as confidential, available for use in a pending case only to promote full disclosure of facts and positions that have not yet been fully developed. By maintaining the informal, non-binding and confidential nature of the position papers, a strategic case management goal of identifying initial areas of dispute and structuring a management plan accordingly is more likely to be achieved.

Insurance Nullification also quotes the MANUAL as asserting that “[c]ourts should grant Protective Orders sought by third-parties brought into insurance coverage litigation.”⁴⁵ The MANUAL, however, does not so state. Rather, the MANUAL simply notes that certain third-parties whose documents often are requested in complex insurance coverage cases routinely seek protective orders relating to production of their documents and that some courts have granted such protection.⁴⁶

Finally, *Insurance Nullification* states that the MANUAL “advocates that courts should liberally grant confidentiality orders.”⁴⁷ Again, the MANUAL does not make such a recommendation or suggestion. Recognizing that both insurers and policyholders alike often produce documents containing what they believe to be confidential, commercially sensitive, or trade secret information, the MANUAL discusses alternative methods of balancing these concerns with the need for full and fair discovery of possibly relevant information.⁴⁸ The MANUAL addresses mechanisms for limiting the

45. *Insurance Nullification*, *supra* note 8, at 66.

46. MANUAL, *supra* note 5, § 3.05(b). As § 3.05 underscores:

[Parties] have expressed concern with the confidentiality of documents they have produced in complex insurance litigations. [The Insurance Services Office, Inc.], for example, frequently has moved for protective orders limiting access to its documents to the parties involved in the specific litigation in which they have been produced. In fact, both [the Insurance Services Office and the Chemical Manufacturers Association] now have standard stipulated protective orders that they routinely demand the parties sign as a precondition to the production of documents.

Id.

47. *Insurance Nullification*, *supra* note 8, at 66.

48. MANUAL, *supra* note 5, § 3.07.

scope of protective orders to ensure (1) that parties do not “over-designate” protected materials⁴⁹ and (2) that protective orders in one case do not serve as an undue impediment to production of protected documents in other or subsequent cases.⁵⁰ The MANUAL also expressly notes that some courts impose a substantial burden on parties seeking a protective order.⁵¹

In attacking the MANUAL’s position on confidentiality, *Insurance Nullification* proclaims categorically that “[p]olicyholders should fight all attempts to create secrecy in litigation . . . [and] should insist that the party seeking a protective order meet a very high burden of proof.”⁵² What this comment fails to recognize is that many of the MANUAL’s suggestions regarding confidentiality have been made because they may benefit all parties, including policyholders.

3. Bad Faith

Insurance Nullification claims that the MANUAL “tacitly endorses” certain “bad faith” tactics allegedly undertaken by insurers.⁵³ The Article criticizes what it characterizes as the MANUAL’s endorsement of policyholder production of “all pleadings, notices and relevant discovery from underlying claims for which coverage is sought.”⁵⁴

In fact, the MANUAL simply states the unremarkable principle that when a policyholder seeks coverage for an underlying claim or lawsuit, the policyholder should be prepared to produce information about that claim or lawsuit in the course of coverage litigation.⁵⁵ The MANUAL does not endorse any improper or “bad faith” use of such materials by insurers against their policyholders.

The MANUAL specifically notes that the sort of potential problems identified in *Insurance Nullification* may arise when informa-

49. *Id.* § 3.07(f).

50. *Id.* § 3.07(g).

51. *Id.* § 3.07(I).

52. *Insurance Nullification*, *supra* note 8, at 67.

53. *Id.* at 69.

54. *Id.* at 69 (quoting the MANUAL, *supra* note 5, at 2-8) (internal quotes omitted).

55. MANUAL, *supra* note 5, § 2.02(c).

tion obtained by insurers in discovery could be used against their policyholders in still-pending underlying cases:

Complex insurance coverage litigation often involves the determination of coverage issues pertinent to both pending and future claims by third parties against policyholders. Therefore, the parties may be concerned that documents or testimony generated by or about them in connection with coverage issues could adversely impact the defense of the underlying claims for which coverage is sought if disclosed to the claimants in those proceedings. Likewise, the parties may be concerned that the defense of similar future claims will be negatively impacted if information from the coverage case is made generally available to potential future claimants.⁵⁶

Far from advocating use of such information in a way that would harm the policyholder's defense of underlying claims, the MANUAL suggests that an appropriately tailored protective order can serve the dual goals of disclosure of potentially relevant information in the coverage action and protection of the policyholder's interests in pending or future third-party actions.⁵⁷

Ironically, *Insurance Nullification* simultaneously ignores this suggestion when levying its accusation that the MANUAL advocates "bad faith" conduct by insurers, while also taking issue with the concept of protective orders as promoting "secrecy," even though such orders often act to the benefit of policyholders.⁵⁸ As this discussion demonstrates, the MANUAL not only identifies the problems associated with policyholder disclosures, but proposes a solution that may be acceptable to all parties and the court.

CONCLUSION

The MANUAL was created in a spirit of cooperation among adversaries in order to further the goals of efficiency, professionalism, and fairness in litigating complex insurance coverage cases. The authors of the MANUAL attempted to set aside their adversarial biases and identify, for the benefit of other lawyers, litigants, and the courts, the range of alternative procedural meth-

56. *Id.* § 3.07(a).

57. *Id.*

58. See *Insurance Nullification*, *supra* note 8, at 66-67 ("Secrecy of insurance company files has no place in insurance coverage litigation.").

ods that could be used to achieve these goals. As participants in a collaborative effort, the authors recognized that they might not agree with every alternative, and that not every alternative was suitable for every coverage case.

Insurance Nullification ignores the context in which the MANUAL was created and unfairly criticizes the MANUAL for failing to exclusively advocate procedural methods which favor policyholders in coverage cases. That is something the MANUAL is not and never was intended to do. *Insurance Nullification* also takes out of context and mischaracterizes the content of the MANUAL in a way that unfairly portrays the substance of the MANUAL.

The authors of the MANUAL continue to believe that their clients and the judicial system will be better served if adversaries in complex coverage cases attempt to work together to develop a common ground in the management and handling of these cases. The authors continue to believe that their clients' interests are best furthered by undertaking cooperative efforts to manage these cases fairly, efficiently, and cost effectively, and that these efforts do not impede their ability to advocate vigorously and zealously their respective clients' positions in these cases.

