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REPLY TO: LOS ANGELES OFFICE

VIA eMAIL: adjuster@insuranceco.com

1 July 2008

Mr. John Doe
Senior Claims Specialist
Insurance Company
1000 Water Street
New York, New York 10041

Re: PPPPPP v. DDDDDD
Your Policy No.: 1234567890ABCDEF
Your File No.: ABC123
Our File No.: ABCD.122101.01

Dear Mr. Doe:

Please allow this letter to respond to your eMail dated 25 June 2008 on the issue of the deductible for the above-referred matter.

I refer back to my earlier letter to you date 6 June 2008 and incorporate that by reference herein.

I note with appreciation from your 25 June eMail that we are all on the same page as to the 50% discount to be given to DDDDD as a result of the early mediation, as well as the larger issue of the settlement itself. What remains to be resolved then is the issue of the deductible itself, which in turn depends on the number of claims. DDDDD maintains its earlier position that there are only two claims, not four. This would result in a total of $25,000.00 to be paid by DDDDD, which has occurred.

Your eMail states that there were a total of three separate projects (UUUUU, WWWWW and QQQQQ). This is correct. However, no claim was made for QQQQQ. It is not even mentioned in Mr. HHHHH's 14 March 2007 letter. It is mentioned only once in his 25 March 2008 letter, when he states in general at the outset on p. 2 that "The Plaintiffs hired DDDDD as an expert to perform engineering, construction management, and other work on there projects – the 117 acre UUUUU site, the 114.5 acre WWWWW site, and the 13.4 acre QQQQQ site." Other than this one recitation, however, the balance of this letter is silent as to any claims related to QQQQQ.

It takes more than a mere passing mention of a project to form the basis for a claim. Rather, there must be, simply put, a claim. An allegation that something was done improperly as to this project that caused damage, that may give rise to liability, and which may thereby trigger coverage. No such mention can be found anywhere in the 18 pages that comprise these two letters, which are the documents which in turn set forth the claims at issue herein. Accordingly, to premise one claim (and thus one deductible) on Pine is simply not tenable.

Next, as to the issue of the UUUUU project itself, your 25 June eMail states "Also, the initial report to Insurance Company concerned purported compaction issues on a test trench on UUUUU. This was a separate and distinct issue from the others raised on UUUUU (concerning, amongst other issues, certain grading and other civil engineering issues)." Based on this, you therefore justify splitting the UUUUU claim into two claims, the first for the trench, and the second for everything else.

DDDDD respectfully disagrees with this analysis. I would refer you to Bay Cities Paving & Grading, Inc. v. Lawyers' Mutual Ins. Co. (1993) 5 Cal.4th 854, 862, which stated as to determining multiple deductibles for insurance coverage in a legal malpractice setting:

> This and other professional liability policies contain a "deductible," that is, a requirement that the insured bear a portion of the liability "[w]ith respect to *each claim*." (Italics added.) The amount of the deductible can be significant. If a client could assert multiple claims based on a single injury, the attorney would be responsible for multiple deductibles, corresponding to the number of claims. Indeed, in some cases, insurers have contended that multiple claims were being presented, so as to increase the amount of the insured's deductible and thereby decrease the amount owed by the insurer. (Combined Communications Corp. v. Seabord Sur. Co. (9th Cir. 1981) 641 F.2d 743, 744.) Such a result is obviously not favorable to the insured. It also works to the disadvantage of the insured's client because the insurer is responsible for a smaller portion of the damages, and the client must therefore attempt to obtain satisfaction from the attorney's other assets. fn. 2 Courts have generally rejected insurers' attempts to apply multiple deductibles to single claims or related claims by third parties against insureds. (Beaumont-Gribin-Von Dyl Management Co. v. California Union Ins. Co. (1976) 63 Cal.App.3d 617; Haerens v.

> Commercial Cas. Ins. Co. (1955) 130 Cal.App.2d Supp. 892; see generally Annot., Liability Insurance: What Is "Claim" Under Deductibility-Per-Claim Clause (1988) 60 A.L.R.4th 983, 987.) By parity of reasoning, the artificial multiplication of claims should not result in increased coverage. To construe a policy provision narrowly so as to find only one claim and thus limit the deductible, but to construe the same language expansively so as to find multiple claims and thereby increase coverage, would be a result-oriented approach we decline to follow.

DDDDD respectfully submits that the same rationale applies here. Simply put, the trench issue was not the claim. It was just the first issue raised in the UUUUU claim. All the other issues which were provided later (such as potholing, grading, etc.) were simply more detail (along with the trench) to the UUUUU claim.

Based on this, therefore, as well as your own policy language as discussed in my prior letter, DDDDD maintains that this situation revolved around two claims: UUUUU and WWWWW. These two claims, when the 50% reduction is applied, results in a $25,000.00 total deductible, which DDDDD has already paid.

Again, I trust that this letter has clarified matters for you. Of course, should you have any questions or comments on this or any other matter, I would be happy to speak with you at your convenience. I look forward to working with you to achieve a quick resolution of this matter to protect DDDDD's interests.

Best Regards,

John A. Safyurtlu
General Counsel

cc: Client