

STATE	CASES	DEVELOPMENTS IN 'RIGHT TO INDEPENDENT COUNSEL' CASES
ALABAMA	<i>L & S Roofing Supply Co. v. St. Paul Fire & Marine Ins. Co.</i>, 521 So. 2d 1298 (Ala. 1987) <i>Twin City Fire Ins. Co. v. Colonial Life & Accident Ins. Co.</i>, 839 So. 2d 614 (Ala. 2002) <i>Lifestar Response of Ala., Inc. v. Admiral Ins. Co.</i>, 17 So. 3d 200 (Ala. 2009)	Alabama has followed <i>L & S Roofing</i>, where an insurance company's defense of a policyholder under a reservation of rights was not a basis for awarding independent counsel. <i>L & S Roofing Supply Co. v. St. Paul Fire & Marine Ins. Co.</i>, 521 So. 2d 1298 (Ala. 1987). The Alabama Supreme Court noted an "enhanced obligation of good faith" towards the policyholder when defending pursuant to a reservation of rights. <i>Lifestar Response of Ala., Inc. v. Admiral Ins. Co.</i>, 17 So. 3d 200, 217 (Ala. 2009).
ALASKA	<i>Continental Ins. Co. v. Bayless & Roberts, Inc.</i>, 608 P.2d 281 (Alaska 1980) <i>CHI of Alaska, Inc. v. Employers Reinsurance Corp.</i>, 844 P.2d 1113 (Alaska 1993) Alaska Statutes Section 21.89.100* <i>Great Divide Ins. Co. v. Carpenter</i>, 79 P.3d 599 (Alaska 2003) <i>Doxsee v. Doxsee</i>, 80 P.3d 225 (Alaska 2003) <i>Attys. Liab. Prot. Soc'y, Inc. v. Ingaldson Fitzgerald, P.C.</i>, 370 P.2d 1101 (Alaska 2016), <i>rev'd in part, aff'd in part</i>, <i>Attys. Liab. Prot. Soc'y, Inc. v. Ingaldson Fitzgerald, P.C.</i>, 838 F.3d 976 (9th Cir. 2016)	In Alaska if an insurance company has a duty to defend and a conflict arises between an insurance company and the policyholder, then independent counsel must be provided. Alaska Stat. § 21.89.100. The allocation provision of the statute was declared unconstitutional in <i>Ingaldson</i>, where the Ninth Circuit held that the prohibition on reimbursements of fees and costs incurred by an insurance company defending a non-covered claim was preempted by federal law. <i>Attys. Liab. Prot. Soc'y, Inc. v. Ingaldson Fitzgerald, P.C.</i>, 370 P.2d 1101 (Alaska 2016), <i>rev'd in part, aff'd in part</i>, <i>Attys. Liab. Prot. Soc'y, Inc. v. Ingaldson Fitzgerald, P.C.</i>, 838 F.3d 976 (9th Cir. 2016).

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ARIZONA	Joseph v. Markovitz, 551 P.2d 571 (Ariz. Ct. App. 1976) Farmers Ins. Co. v. Vagnozzi, 675 P.2d 703 (Ariz. 1983)	
ARKANSAS	Northland Ins. Co. v. Heck's Service Co. Inc., 620 F. Supp. 107 (E.D. Ark. 1985) Union Ins. Co. v. Knife Co., 902 F. Supp. 877 (W.D. Ark. 1995)	

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CALIFORNIA	San Diego Fed. Credit Union v. Cumis Ins. Soc'y, Inc., 162 Cal. App. 3d 358 (Cal. Ct. App. 1984) McGee v. Superior Ct., 176 Cal. App. 3d 221 (Cal. Ct. App. 1985) Native Sun Inv. Grp. V. Ticor Title Ins. Co., 189 Cal. App. 3d 1265 (Cal. Ct. App. 1987) California Civil Code Section 2860 Blanchard v. State Farm Fire & Cas. Co., 2 Cal. App. 4th 345 (Cal. Ct. App. 1991) Golden Eagle Ins. Co. v. Foremost Ins. Co., 20 Cal. App. 4th 1372 (Cal. Ct. App. 1993) Rockwell Int'l Corp. v. Superior Ct., 26 Cal. App. 4th 1255 (Cal. Ct. App. 1994) Assurance Co. of Am. v. Haven, 32 Cal. App. 4th 78 (Cal. Ct. App. 1995) Scottsdale Ins. Co. v. Hous. Grp., No. C94-3864, 1995 U.S. Dist. LEXIS 8791 (N.D. Cal. June 21, 1995) Dynamic Concepts, Inc. v. Truck Ins. Exch., 61 Cal. App. 4th 999 (Cal. Ct. App. 1998) Novak v. Low, Ball & Lynch, 77 Cal. App. 4th 278 (Cal. Ct. App. 1999) Gafcon, Inc. v. Ponsor & Assoc., 98 Cal. App. 4th 1388 (Cal. Ct. App. 2002) Long v. Century Indem. Co., 163 Cal. App. 4th 1460 (Cal. Ct. App. 2008) Travelers Property v. Centex Homes, C-10-02757, 2011 WL 1225982 (N.D. Cal. April 1, 2011) Swanson v. State Farm Gen. Ins. Co., 219 Cal. App. 4th 1153 (Cal. Ct. App. 2013) Centex Homes v. St. Paul Fire and Marine Ins. Co., 237 Cal. App. 4th 23 (Cal. Ct. App. 2015), <i>aff'd</i> 19 Cal. App. 5th 789 (Cal. Ct. App. 2018)	A policyholder's right to independent counsel is governed by California Civil Code § 2860 and subsequent case law, which holds that an insurance company is obligated to provide a policyholder with independent counsel whenever a conflict arises. Cal Civ. Code § 2860; <i>see Swanson v. State Farm Gen. Ins. Co.</i>, 219 Cal. App. 4th 1153, 1160 (Cal. Ct. App. 2013) <i>Centex Homes v. St. Paul Fire and Marine Ins. Co.</i>, 237 Cal. App. 4th 23 (Cal. Ct. App. 2015), <i>aff'd</i> 19 Cal. App. 5th 789 (Cal. Ct. App. 2018) (speculation about possible or potential conflicts does not warrant appointment of independent counsel).
COLORADO	Shelter Mut. Ins. Co. v. Vaughn, 300 P.3d 998 (Colo. Ct. App. 2013)	Colorado has yet to address the right to independent counsel, but in <i>Shelter</i>, the court noted that, under the Colorado Rules of Professional Conduct, an insurance company's defense counsel owes a duty to only the policyholder. <i>Shelter Mut. Ins. Co. v. Vaughn</i>, 300 P.3d 998 (Colo. Ct. App. 2013).
CONNECTICUT	Martyn v. Donlin, 166 A.2d 856 (Conn. 1961) Curren v. Verinis, 271 A.2d 703 (Conn. Super. Ct. 1970) Aetna Life & Cas. Co. v. Gentile, No. 01222591995, Conn. Super. LEXIS 3444 (Super. Ct. Dec. 12, 1995)	

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DELAWARE	Int'l Underwriters, Inc. v. Stevenson Enters., Inc., No. 80C-SE-82, 1983 Del. Super. LEXIS 649 (Del. Super. Ct. Oct. 4, 1983)	Delaware has yet to directly address the right to independent counsel, but in <i>Stevenson</i> , the court noted that "[i]f an insurer has a conflict of interest, either real or potential, it is not relieved of its duty to defend. The insurer must either provide independent counsel to represent its insured, or pay the cost of defense incurred by the insured." <i>Int'l Underwriters, Inc. v. Stevenson Enters., Inc.</i> , No. 80C-SE-821983, Del. Super. LEXIS 649, at *3 (Del. Super. Ct. Oct. 4, 1983).
FLORIDA	Taylor v. Safeco Ins. Co., 361 So. 2d 743 (Fla. Dist. Ct. App. 1978) Giffen Roofing Co. v. DHS Developers, Inc., 442 So. 2d 396 (Fla. Dist. Ct. App. 1983) Auto Owners Ins. Co. v. Salvia, 472 So. 2d 486 (Fla. Dist. Ct. App. 1985) Nationwide Mut. Fire Ins. Co. v. Beville, 825 So. 2d 999 (Fla. Dist. Ct. App. 2002) Travelers Indem. Co. v. Royal Oak Enter., 344 F. Supp. 2d 1358 (M.D. Fla. 2004) Florida Statutes Section 627.426 Rules Regulating The Florida Bar Rule 4-1.8(j) Aguero v. First Am. Ins. Co., 927 So. 2d 894 (Fla. Dist. Ct. App. 2005) BellSouth Telecomms., Inc. v. Church & Tower of Fla., Inc., 930 So. 2d 668 (Fla. Dist. Ct. App. 2006) EmbroidMe.com, Inc. v. Travelers Prop. Cas. Co. of Am., 845 F.3d 1099 (11th Cir. 2017)	Under the Florida Bar Administration statute Fla. Stat. § 627.426, an insurance company has the option to provide independent counsel, if the insurance company refuses to defend and provides appropriate disclosure to the policyholder. An insurance company's reservation of rights gives rise to the right to independent counsel. See <i>Aguero v. First American Ins. Co.</i> , 927 So. 2d 894 (Fla. Dist. Ct. App. 2005); <i>BellSouth Telecomms., Inc. v. Church & Tower of Fla., Inc.</i> , 930 So. 2d 668, 670-71 (Fla. Dist. Ct. App. 2006); <i>EmbroidMe.com, Inc. v. Travelers Prop. Cas. Co. of Am.</i> , 845 F.3d 1099 (11th Cir. 2017) (Florida law).
GEORGIA	Am. Fam. Life Assurance Co. v. U.S. Fire Co., 885 F.2d 826 (11th Cir. 1989) Util. Serv. Co. v. St. Paul Travelers Ins. Co., No. 5:06-CV-207(CAR), 2007 U.S. Dist. LEXIS 4634 (M.D. Ga. Jan. 22, 2007)	
HAWAII	First Ins. Co. of Haw., Inc. v. State, 665 P.2d 648 (Haw. 1983) Finley v. Home Ins. Co., 975 P.2d 1145 (Haw. 1998) Delmonte v. State Farm Fire & Cas. Co., 975 P.2d 1159 (Haw. 1999) Anastasi v. Fidelity Nat. Title Ins. Co., 366 P.3d 160 (Haw. 2016)	In Hawaii, one court noted a reservation of rights is not grounds to interfere with an insurance company's "right to select counsel of its choice." See <i>Anastasi v. Fidelity Nat. Title Ins. Co.</i> , 366 P.3d 160, 162 (Haw. 2016) (finding that an insurance company has an enhanced standard of good faith when defending a claim under a reservation of rights).
IDAHO		

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ILLINOIS	Maryland Mut. Cas. Co. v. Peppers, 355 N.E.2d 24 (Ill. 1976)Thorton v. Paul, 384 N.E.2d 335 (Ill. 1978)Murphy v. Urso, 430 N.E.2d 1079 (Ill. 1981)Clemmons v. Travelers Ins. Co., 430 N.E.2d 1104 (Ill. 1981)Nandorf, Inc. v. CNA Ins. Co., 479 N.E.2d 988 (Ill. App. Ct. 1985)Pepper Constr. Co. v. Cas. Ins. Co., 495 N.E.2d 1183 (Ill. App. Ct. 1986)Shelter Mut. Ins. Co. v. Bailey, 513 N.E.2d 490 (Ill. App. Ct. 1987)Illinois Mun. League Risk Mgmt. Ass'n v. Seibert, 585 N.E.2d 1130 (Ill. App. Ct. 1992)Am. Family Mut. Ins. Co. v. W.H. McNaughton Builders, Inc., 843 N.E.2d 492 (Ill. App. Ct. 2006)Stoneridge Dev. Co. v. Essex Inc. Co., 888 N.E.2d 633 (Ill. App. Ct. 2008)Std. Mut. Ins. Co. v. Lay, 989 N.E.2d 591 (Ill. App. Ct. 2013)*Xtreme Prot. Servs., LLC v. Steadfast Ins. Co., 143 N.E.3d 128 (Ill. App Ct. 2019)Joseph T. Ryerson & Son, Inc. v. Travelers Indem. Co. of Am., 165 N.E.3d 439 (Ill. App. 2020)*	Illinois courts recognize an insurance company's duty to allow the policyholder to select independent counsel at the insurance company's expense where a conflict of interest arises. Illinois cases law identify some of the conflicts that may arise. <i>See Stoneridge Dev. Co. v. Essex Inc. Co.</i>, 888 N.E.2d 633 (Ill. App. Ct. 2008) (describing conflicts of interest); <i>Std. Mut. Ins. Co. v. Lay</i>, 989 N.E.2d 591, 596 (Ill. App. Ct. 2013); <i>Xtreme Prot. Servs., LLC v. Steadfast Ins. Co.</i>, 143 N.E.3d 128 (Ill. App Ct. 2019) (insurance company failed to show how the policyholder's right to select independent counsel resulted in a presumption of prejudice, and could not deny coverage by asserting a breach of the cooperation clause); <i>Joseph T. Ryerson & Son, Inc. v. Travelers Indem. Co. of Am.</i>, 165 N.E.3d 439, 460 (Ill. App. 2020) (finding that there was no conflict of interest to entitle the policyholder to independent counsel at the insurance company's defense: "[M]any cases involve a "nontrivial probability" of judgment in excess of the applicable policy limits . . . [h]owever, this fact alone does not trigger a conflict of interest").
INDIANA	Cincinnati Ins. Co. v. Wills, 717 N.E.2d 151 (Ind. 1999) Gallant Ins. Co. v. Wilkerson, 720 N.E.2d 1223 (Ind. Ct. App. 1999) Armstrong Cleaners, Inc. v. Erie Ins. Exch., 364 F. Supp. 2d 797 (S.D. Ind. 2005) Am. Fire & Cas. Co. v. Roller, No. 29A05-0511-CV-681, 2007 Ind. App. LEXIS 767 (Ind. Ct. App. Apr. 18, 2007) Sitek v. J. Cerna Trucking, Inc., 2009 WL 624345 (N.D. Ind. Mar. 9, 2009) Smarte Carte v. Simon Prop. Grp., 163 N.E.3d 315 (Ind. Ct. App. 2020)	A case from Indiana holds that, when a conflict arises between a policyholder and insurance company, the insurance company must provide an independent attorney to represent the policyholder or reimburse the policyholder for defense of their own choosing. <i>Sitek v. J. Cerna Trucking, Inc.</i>, 2009 WL 624345, at *7 (N.D. Ind. Mar. 9, 2009). Where there is a partial conflict between the policyholder and insurance company, the insurance company should not defend, but reimburse the policyholder's independent counsel. <i>Smarte Carte v. Simon Prop. Grp.</i>, 163 N.E.3d 315 (Ind. Ct. App. 2020).
IOWA	First Newton Nat'l Bank v. Gen. Cas. Co. of Wisc., 426 N.W.2d 618 (Iowa 1988)	

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KANSAS	Bell v. Tilton, 674 P.2d 468 (Kan. 1983) Patrons Mut. Ins. Ass'n v. Harmon, 732 P.2d 741 (Kan. 1987) State Farm Fire & Cas. Co. v. Finney, 770 P.2d 460 (Kan. 1989) Ramsey v. Lee Builders, Inc. 95 P.3d 1033 (Kan. Ct. App. 2004) Hackman v. Western Agric. Ins. Co., 275 P.3d 73 (Kan. Ct. App. 2012) Eye Style Optics, LLC v. State Farm Fire and Cas. Co., No. 14-2118-RDR, 2014 WL 2472096 (D. Kan. June 3, 2014)*	Kansas follows majority rule in finding a right to independent counsel when a conflict of interest exists. In <i>Eye Style</i>, the court found that alleged conflict between the parties was not enough to require independent counsel where there were covered and uncovered claims for negligent versus intentional misconduct. <i>Eye Style Optics, LLC v. State Farm Fire and Cas. Co.</i>, No. 14-2118-RDR, 2014 WL 2472096, at *5 (D. Kan. June 3, 2014) (Kansas law).
KENTUCKY	Twin City Fire Ins. Co. v. Chewning, No. 5:18-CV-124-TBR, 2019 WL 2147282 (W.D. Ky. May. 13, 2019)* Outdoor Venture Corp. v. Philadelphia Indem. Ins. Co., No. 6:16-cv-182-KKC, 2018 WL 4656400 (E.D. Ky. Sept. 27, 2018), <i>aff'd by</i> Outdoor Venture Corp. v. Philadelphia Indem. Ins. Co., 841 F. App'x 760 (6th Cir. 2020)*	Federal courts have stated that the "right to independent counsel" issue is a "novel question of state insurance law." <i>Twin City Fire Ins. Co. v. Chewning</i>, No. 5:18-CV-124-TBR, 2019 WL 2147282, at*7 (W.D. Ky. May. 13, 2019) (Kentucky law). The courts distinguish from jurisdictions that hold "a reservation of rights issued on certain bases creates a conflict of interest such that the Insured is entitled to 'independent counsel' paid for by the Insurer." <i>Outdoor Venture Corp. v. Philadelphia Indem. Ins. Co.</i>, 841 F. App'x 760, 769 (6th Cir. 2020) (Kentucky law). Instead, independent counsel is required where is "significant, not merely theoretical, actual, not merely potential." <i>Outdoor Venture Corp. v. Philadelphia Indem. Ins. Co.</i>, No. 6:16-cv-182-KKC, 2018 WL 4656400, at *56 (E.D. Ky. Sept. 27, 2018) (Kentucky law).

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LOUISIANA	Storm Drilling Co. v. Atl. Richfield Co., 386 F. Supp. 830 (E.D. La. 1974) Dugas Pest Control of Baton Rouge, Inc. v. Mut. Fire, Marine & Inland Ins. Co., 504 So. 2d 1051 (La. Ct. App. 1987) Nat'l Union Fire Ins. Co. v. Circle, Inc., 915 F.2d 986 (5th Cir. 1990) Belanger v. Gabriel Chems., Inc., 787 So. 2d 559 (La. Ct. App. 2001) Smith v. Reliance Ins. Co. of Ill., 807 So. 2d 1010 (La. Ct. App. 2002) Trinity Universal Ins. Co. v. Stevens Forestry Serv., Inc., 335 F.3d 353 (5th Cir. 2003) Emery v. Progressive Cas. Ins. Co., 49 So. 3d 17 (La. Ct. App. 2010) Landmark Am. Ins. Co. v. Esters, No. 2:20-CV-1263, 2022 WL 1720379 (W.D. La. Apr. 29, 2022)*	Louisiana recognizes a duty to provide independent counsel where the dual representation conflict is substantial. Where an insurance company appointed a single attorney to defend both the insurance company and the policyholders, a court found that there was an "obvious conflict of interest." <i>Emery v. Progressive Cas. Ins. Co.</i>, 49 So. 3d 17, 22 (La. Ct. App. 2010). By failing to timely appoint separate counsel, the insurance company waived its coverage defenses by denying coverage when it represented both itself and the policyholder. <i>Id.</i> Louisiana courts have reiterated that if a reservation of rights creates a conflict of interest, the insurance company must adequately alert the policyholder of the conflict. <i>Landmark Am. Ins. Co. v. Esters</i>, No. 2:20-CV-1263, 2022 WL 1720379 (W.D. La. Apr. 29, 2022).
MAINE	Travelers Indem. Co. v. Dingwell, 414 A.2d 220 (Me. 1980) Patrons Oxford Ins. Co. v. Harris, 905 A.2d 819 (Me. 2006) Metro. Prop. & Cas. Ins. Co. v. Googins, No. CV-13-102, 2014 Me. Super. LEXIS 228 (Me. Super. Oct. 31, 2014)*	Maine courts recognize the right to independent counsel. The court in <i>Metropolitan</i> alluded to a policyholder's right to independent counsel: "when an insurer has either denied coverage or reserved its right to deny coverage, an insured has the right to control the defense of the case and may enter into a settlement that shields him [or her] from personal liability while allowing recovery from the insurer - if coverage exists." <i>Metro. Prop. & Cas. Ins. Co. v. Googins</i>, No. CV-13-102, 2014 Me. Super. LEXIS 228 (Me. Super. Oct. 31, 2014); <i>see also Patrons Oxford Ins. Co. v. Harris</i>, 905 A.2d 819, 826 (Me. 2006) (holding that a reservation of rights waives the insurance company's right to withhold consent to settlement of the underlying claim).
MARYLAND	Brohawn v. Transamerica Ins. Co., 347 A.2d 842 (Md. 1975) Allstate Ins. Co. v. Atwood, 572 A.2d 154 (Md. 1990) Cardin v. Pac. Emps. Ins. Co., 745 F. Supp. 330 (D. Md. 1990) Allstate Ins. Co. v. Campbell, 639 A.2d 652 (Md. 1994) Roussos v. Allstate Ins. Co., 655 A.2d 40 (Md. Ct. Spec. App. 1995)	

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MASS.	Magoun v. Liberty Mut. Ins. Co., 195 N.E.2d 514 (Mass. 1964)Three Sons, Inc. v. Phoenix Ins. Co., 257 N.E.2d 774 (Mass. 1970)Herbert A. Sullivan, Inc. v. Utica Mut. Ins. Co., 788 N.E.2d 522 (Mass. 2003)N. Sec. Ins. Co. v. R.H. Realty Tr., 941 N.E.2d 688 (Mass. App. Ct. 2011)Mount Vernon Fire Ins. Co. v. VisionAid, Inc., 875 F.3d 716 (1st Cir. 2017)Onebeacon Am. Ins. Co. v. Celanese Corp., 84 N.E.3d 867 (Mass. App. Ct. 2017)	Massachusetts courts continue to uphold a liberal standard for independent counsel. Even if no conflict exists between the insurance company and policyholder, the threat of conflict is so great that a reservation of rights often warrants the right to independent counsel. <i>N. Sec. Ins. Co. v. R.H. Realty Tr.</i> , 941 N.E.2d 688, 695 (Mass. App. Ct. 2011). Further, an insurance company may be required to pay more than its standard panel rate if the independent counsel's rate is reasonable. <i>Id.</i>
MICHIGAN	Allstate Ins. Co. v. Freeman, 443 N.W.2d 734 (Mich. 1986)Fed. Ins. Co. v. X-Rite, Inc., 748 F. Supp. 1223 (W.D. Mich. 1990)Aetna Cas. & Sur. Co. v. Dow Chem. Co., 44 F. Supp. 2d 847 (E.D. Mich. 1997)Cent. Mich. Bd. of Trs. v. Employers Reinsurance Corp., 117 F. Supp. 2d 627 (E.D. Mich. 2000)Lapham v. Jacobs Tech., Nos. 295482, 2011 WL 2848802 (Mich. Ct. App. July 19, 2011)	Although the Supreme Court of Michigan has not directly addressed the issue of independent counsel, other Michigan courts conclude that a policyholder has the right to independent counsel when a conflict of interest exists between the policyholder and insurance company. <i>Lapham v. Jacobs Tech.</i> , Nos. 295482, 2011 WL 2848802 (Mich. Ct. App. July 19, 2011) (holding that a policyholder did not submit evidence demonstrating that an insurance company's hired counsel acted against its interests).
MINNESOTA	Prahm v. Rupp Constr. Co., 277 N.W.2d 389 (Minn. 1979)Miller v. Shugart, 316 N.W.2d 729 (Minn. 1982)Mut. Serv. Cas. Ins. Co. v. Luetmer, 474 N.W.2d 365 (Minn. Ct. App. 1991)Hawkins, Inc. v. Am. Int'l Specialty Lines Ins. Co., No. A07-1529, 2008 WL 4552683 (Minn. Ct. App. Oct. 14, 2008)*Select Comfort Corp. v. Arrowood Indem. Co., No 13-2975, 2014 WL 4232334 (D. Minn. Aug. 26, 2014)	Generally, Minnesota case law maintains that a policyholder has a right to independent counsel in cases where there is an "actual conflict of interest." <i>Hawkins, Inc. v. Am. Int'l Specialty Lines Ins. Co.</i> , No. A07-1529, 2008 WL 4552683, at *8 (Minn. Ct. App. Oct. 14, 2008). In <i>Select</i> , an insurance company's reservation of rights letter created an actual conflict of interest. <i>Select Comfort Corp. v. Arrowood Indem. Co.</i> , No 13-2975, 2014 WL 4232334, at *6 (D. Minn. Aug. 26, 2014) (Minnesota law).
MISSISSIPPI	Hartford Accident & Indem. Co. v. Foster, 528 So. 2d 255 (Miss. 1988)Moeller v. Am. Guarantee and Liab. Ins. Co., 707 So. 2d 1062 (Miss. 1996)PIC Grp., Inc. v. LandCoast Insulation, Inc., 795 F. Supp. 2d 459 (S.D. Miss 2011)	Mississippi follows <i>Moeller</i> whenever an insurance company undertakes a defense of a policyholder under a reservation of rights. <i>Moeller v. Am. Guarantee and Liab. Ins. Co.</i> , 707 So. 2d 1062, 1071 (Miss. 1996); <i>see also PIC Grp., Inc. v. LandCoast Insulation, Inc.</i> , 795 F. Supp. 2d 459, 464 (S.D. Miss 2011) (Mississippi law).

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MISSOURI	Howard v. Russell Stover Candies, Inc., 649 F.2d 620 (8th Cir. 1981) Vigilant Ins. Co. v. Behrenhausen, 889 F. Supp. 1130 (W.D. Mo. 1995) Truck Ins. Exch. v. Prairie Framing, LLC, 162 S.W.3d 64 (Mo. Ct. App. 2005)	
MONTANA	St. Paul Fire and Marine Ins. Co. v. Thompson, 433 P.2d 795 (Mont. 1967) In re The Rules of Professional Conduct, 2 P.3d 806 (Mont. 2000) Safeco Ins. Co. of Am. V. Liss, No. DV-29-99-12, 2005 Mont. Dist. LEXIS 1073 (Mont. Dist. Ct. Mar. 11, 2005) Mid-Century Ins. Co. v. Windfall, Inc., No. CV-15-146-M-DLC, 2016 U.S. Dist. LEXIS 67482 (D. Mont. May 23, 2016)	In <i>Rules of Professional Conduct</i> , the Montana Supreme Court recognized that "[i]n cases where an insured's exposure exceeds his [or her] insurance coverage, where the insurer provides a defense subject to a reservation of rights, and where an insurer's obligation to indemnify its insured may be excused because of a policy defense, there are potential conflicts of interest." <i>In re The Rules of Professional Conduct</i> , 2 P.3d 806, 813 (Mont. 2000). In <i>Rules of Professional Conduct</i> , the Court did not address the issue of whether independent counsel is required when a conflict of interest exists between the insurance company and policyholder. <i>Id.</i> The court in <i>Windfall</i> cited to other jurisdictions to hold that a "significant, not merely theoretical, actual, not merely potential" conflict must arise to warrant a policyholder's right to independent counsel, and "antagonistic" positions between parties does not constitute an "actual conflict." <i>Mid-Century Ins. Co. v. Windfall, Inc.</i> , No. CV-15-146-M-DLC, 2016 U.S. Dist. LEXIS 67482 (D. Mont. May 23, 2016).
NEBRASKA		
NEVADA	Crystal Bay Gen. Improvement Dist. v. Aetna Cas. Surety Co., 713 F. Supp. 1371 (D. Nev. 1989) State Farm Mut. Auto. Ins. Co. v. Hansen, 357 P.3d 338 (2015)	For the first time, the Nevada Supreme Court directly addressed the question of a policyholder's right to independent counsel in <i>Hansen</i> . <i>State Farm Mut. Auto. Ins. Co. v. Hansen</i> , 357 P.3d 338, 341 (2015) (relying on the California Code to hold that independent counsel is required when a conflict of interest arises, but a reservation of rights letter does not create a per se conflict of interest).
NEW HAMPSHIRE	White Mountain Cable Const. Corp. v. Transamerica Ins. Co., 631 A.2d 907 (N.H. 1993)	

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NEW JERSEY	Merchants Indem. Corp. v. Eggleston, 179 A.2d 505 (N.J. 1962) Burd v. Sussex Mut. Ins. Co., 267 A.2d 7 (N.J. 1970) Dunne v. Fireman's Fund Am. Ins. Co., 353 A.2d 417 (N.J. 1976) Voorhees v. Preferred Mut. Ins. Co., 588 A.2d 417 (N.J. Super. Ct. App. Div. 1991) Aquino v. State Farm Ins. Cos., 793 A.2d 824 (N.J. Super. Ct. App. Div. 2002) L.C.S., Inc. v. Lexington Ins. Co., 853 A.2d 974 (N.J. Super. Ct. App. Div. 2004) New Jersey Mfrs. Ins. Co. v. Vizcaino, 920 A.2d 754 (N.J. Super. Ct. App. Div. 2007) Nazario v. Lobster House, No. A-3025-07T1, 2009 WL 1181620 (N.J. Super. Ct. App. Div. May 5, 2009) Petersen v. New Jersey Mfrs. Ins. Co., No. A-0459-12T4, 2014 WL 1716073 (N.J. Super. Ct. App. Div. May 2, 2014)	<i>Merchants Indem. Corp. v. Eggleston</i>, 179 A.2d 505, 513-15 (N.J. 1962) ("[t]he classic mode of reservation is a non-waiver agreement between the insured and the insurer"). Also, insurance companies must <i>inform</i> policyholders of their right independent counsel. <i>See Petersen v. New Jersey Mfrs. Ins. Co.</i>, No. A-0459-12T4, 2014 WL 1716073, at *13-14 (N.J. Super. Ct. App. Div. May 2, 2014)* (insurance company adequately informed the policyholder of its reservation of rights); <i>Nazario v. Lobster House</i>, No. A-3025-07T1, 2009 WL 1181620 (N.J. Super. Ct. App. Div. May 5, 2009) (holding that the insurance company was estopped from denying insurance coverage because reservation of rights inadequate). New Jersey courts continue to follow <i>Burd v. Sussex Mut. Ins. Co.</i>, 267 A.2d 7, 13 (N.J. 1970).
NEW MEXICO	Am. Employers' Ins. Co. v. Cont'l Cas. Co., 512 P.2d 674 (N.M. 1973) Am. Employers' Ins. Co. v. Crawford, 533 P.2d 1203 (N.M. 1975)	

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NEW YORK	Prashker v. U.S. Guarantee Co., 136 N.E.2d 871 (N.Y. 1956)Com. Pipe & Supply Corp. v. Allstate Ins. Co., 321 N.Y.S.2d 219 (4th Dept. 1971)Parker v. Agric. Ins. Co., 440 N.Y.S.2d 964 (Spec. Term 1981)Pub. Serv. Mut. Ins. Co. v. Goldfarb, 425 N.E.2d 810 (N.Y. 1981)N.Y. State Urban Dev. Corp. v. VSL Corp., 738 F.2d 61 (2d Cir. 1984)Baron v. Home Ins. Co., 492 N.Y.S.2d 50 (2d Dept. 1985)Emons Indus., Inc. v. Liberty Mut. Ins. Co., 749 F. Supp. 1289 (S.D.N.Y. 1990)Cunniff v. Westfield, Inc., 829 F. Supp. 55 (E.D.N.Y. 1993)Vanguard Ins. Co. v. Guagenti, 599 N.Y.S.2d 215 (N.Y. Sup. Ct. 1993)69th St. and 2nd Ave. Garage Assocs., L.P. v. Ticor Title Guarantee Co., 207 A.D.2d 225 (1st Dept. 1995)Booth v. Cont'l Ins. Co., 634 N.Y.S.2d 650 (N.Y. Sup. Ct. 1995)Ansonia Assocs. v. Public Serv. Mut. Ins., 693 N.Y.S.2d 386 (Sup. Ct. 1998), <i>aff'd</i> 692 N.Y.S.2d 5 (1st Dept. 1999)U.S. Underwriters Ins. Co. v. TNP Trucking, Inc., 44 F. Supp. 2d 489 (E.D.N.Y. 1999)Sumo Container Station, Inc. v. Evans, Orr, Pacelli, Norton & Laffan, P.C., 278 A.D.2d 169 (1st Dept. 2000)Murphy v. Nutmeg Ins. Co., 773 N.Y.S.2d 413 (2d Dept. 2004)Elacqua Physicians' Reciprocal Insurers, 800 N.Y.S.2d 469 (3d Dept. 2005) ("Elacqua I") Elacqua Physicians' Reciprocal Insurers, 52 A.D.3d 886, 860 N.Y.S.2d 229 (3d Dept. 2008) ("Elacqua II") Tower Ins. Co. of New York v. Sanita Const. Co., 129 A.D.3d 430 (1st Dept. 2015) Med-Plus, Inc. v. Am. Cas. Co. of Reading, PA, No. 16-CV-2985, 2017 WL 3393824 (E.D.N.Y. Aug. 4, 2017) Great Am. Ins. Co. v. Houlihan Lawrence, Inc., 449 F. Supp. 3d 354 (S.D.N.Y. 2020) Peleus Ins. Co. v. Atl. State Dev. Corp., No. 20 CIV. 2971 (JPC), 2022 WL 562357 (S.D.N.Y. Feb. 24, 2022) Nat'l Hockey League v. TIG Ins. Co., No. 653421, 2022 WL 2733210 (N.Y. Sup. Ct. June 24, 2022)	New York courts continue to favor a policyholder's right to independent counsel after it was first enforced as a common-law right in <i>Prashker</i>. <i>Prashker v. U.S. Guarantee Co.</i>, 136 N.E.2d 871 (N.Y. 1956). In <i>NHL</i>, the court held that the policyholder was "entitled to independent counsel by virtue of defendants' reservation of rights" and the insurance company "waived its right to control NHL's defense in the underlying action by failing to disclaim coverage timely and by making partial payments towards NHL's independent defense." <i>Nat'l Hockey League v. TIG Ins. Co.</i>, No. 653421, 2022 WL 2733210, at *3 (N.Y. Sup. Ct. June 24, 2022); <i>but see Federated Dept. Stores, Inc. v. Twin City Fire Ins. Co.</i>, 807 N.Y.S.2d 62, 66 (N.Y. App. Div. 2006) (insurance company should not be "charged with the obligation to reserve its right against unknown policy defenses"). In <i>Med-Plus</i>, the New York federal district court found that the potential for punitive damages in the underlying matter created a conflict of interest entitling the policyholder to select independent counsel. <i>Med-Plus, Inc. v. Am. Cas. Co. of Reading, PA</i>, No. 16-CV-2985, 2017 WL 3393824, at *3 (E.D.N.Y. Aug. 4, 2017). In New York, one issue is whether insurance companies have a duty to inform the policyholder of their right to independent counsel when a conflict arises. The Court of Appeals has yet to address the duty to inform, but Departments of the Appellate Division are split on the issue. <i>See Peleus Ins. Co. v. Atl. State Dev. Corp.</i>, No. 20 CIV. 2971 (JPC), 2022 WL 562357, at *9 n.8 (S.D.N.Y. Feb. 24, 2022) (New York law) ("it is unclear whether New York law even requires an insurer to advise an insured of their right to independent counsel"). The Third Department in <i>Elacqua II</i> found that failing to inform the policyholder of their right to independent counsel was a deceptive business practice pursuant to General Business Law § 349. <i>Elacqua Physicians' Reciprocal Insurers</i>, 52 A.D.3d 886, 887, 860 N.Y.S.2d 229, 230-31 (3d Dept. 2008) ("Elacqua II"). Conversely, the First Department has held that "the right to independent counsel does not establish an affirmative duty on defendant's part to advise its insured of that right." <i>Tower Ins. Co. of New York v. Sanita Const. Co.</i>, 129 A.D.3d 430, 431 (1st Dept. 2015); <i>see also Sumo Container Station, Inc. v. Evans, Orr, Pacelli, Norton & Laffan, P.C.</i>, 278 A.D.2d 169, 171 (1st Dept. 2000).

STATE	CASES	DEVELOPMENTS IN 'RIGHT TO INDEPENDENT COUNSEL' CASES
NORTH CAROLINA	Nat'l Mortgage Corp. v. Am. Title Ins. Co., 255 S.E. 2d 622 (N.C. Ct. App. 1979)	North Carolina courts have not directly addressed whether a policyholder has a right to independent counsel. In <i>National Mortgage</i> , the Court of Appeals of North Carolina stated: "[j]ust as an insured is not required to accept a defense conditioned upon entering into a "non-waiver agreement," he [or she] is not required to accept a defense rendered under a "reservation of rights." <i>Nat'l Mortgage Corp. v. Am. Title Ins. Co.</i> , 255 S.E. 2d 622, 623 (N.C. Ct. App. 1979).
NORTH DAKOTA	Fetch v. Quam, 530 N.W.2d 337 (N.D. 1995)	
OHIO	Socony-Vacuum Oil Co. v. Cont'l Cas. Co., 59 N.E.2d 199 (Ohio 1945) State Farm Fire & Cas. Co. v. Pildner, 321 N.E.2d 600 (Ohio 1974) Belcher v. Dooley, No. 1044, 1988 Ohio App. LEXIS 508 (Ohio Ct. App. Feb. 16, 1988) Lusk v. Imperial Cas. & Indem. Co., 603 N.E.2d 420 (Ohio Ct. App. 1992) Int'l EPDM Rubber Roofing Sys., Inc. v. Midwestern Indem. Co., No. L-92-406, 1993, Ohio App. LEXIS 5253 (Ohio Ct. App. Nov. 5, 1993) Red Head Brass, Inc. v. Buckeye Union Ins., 735 N.E.2d 48 (Ohio Ct. App. 1999) Dietz-Britton v. Smythe, Cramer Co., 743 N.E.2d 960 (Ohio Ct. App. 2000) Patitucci v. McNeal Schick Archibald & Biro, No. 87576, 2006 WL 3095732 (Ohio Ct. App. Nov. 2, 2006)*	<i>Red Head Brass, Inc. v. Buckeye Union Ins.</i> , 735 N.E.2d 48, 55 (Ohio Ct. App. 1999). See <i>Dietz-Britton v. Smythe, Cramer Co.</i> , 743 N.E.2d 960, 966 (Ohio Ct. App. 2000) (acknowledging that a "potential conflict of interest"); <i>Patitucci v. McNeal Schick Archibald & Biro</i> , No. 87576, 2006 WL 3095732, at *3 (Ohio Ct. App. 2006).
OKLAHOMA	Nisson v. Am. Home Assurance Co., 917 P.2d 488 (Okla. Civ. App. 1996)	
OREGON	Ferguson v. Birmingham Fire Ins. Co., 460 P.2d 342 (Or. 1969) Two Bears Co. v. Am. State Ins. Co., No. 98-35407, 1999 U.S. App. LEXIS 10912 (9th Cir. May 24, 1999) Or. Admin. R. 465.483 (2013)	Oregon Section 465.483 to addresses an insurance company's duty to defend and independent counsel under general liability insurance policies for environmental claims. Or. Admin. R. § 465.483 (2013).

STATE	CASES	DEVELOPMENTS IN 'RIGHT TO INDEPENDENT COUNSEL' CASES
PENNSYLVANIA	Seasor v. Covington, 670 A.2d 157 (Pa. Super. Ct. 1996) Babcock & Wilcox Co. v. Am. Nuclear Insurers, 51 Pa. D. & C.4th 353 (Pa. 2001) Schoffstall v. Nationwide Mut. Ins. Co., 58 Pa. D. & C.4th 14 (Pa. Ct. Com. Pl. 2002) Bedwell Co. v. D. Allen Bros., Inc., No. 1328, 2006 Phila. Ct. Com. Pl. LEXIS 459 (Pa. Ct. Com. Pl. Dec. 6, 2006) Eckman v. Erie Ins. Exch., 21 A.3d 1203 (Pa. Super. Ct. 2011) Babcock & Wilcox Co. v. Am. Nuclear Insurers, 131 A.3d 445 (2015)	Pennsylvania courts continue to recognize a policyholder's right to independent counsel when an actual conflict of interest exists between the policyholder and insurance company. Pennsylvania courts, however, reject the argument that a reservation of rights creates an automatic, actual conflict. <i>Eckman v. Erie Ins. Exch.</i> , 21 A.3d 1203, 1208-09 (Pa. Super. Ct. 2011). Further, in a case spanning two decades of litigation, the <i>Babcock</i> Court noted that when a policyholder is provided defense by the insurance company under a reservation of rights, it may not be entitled to independent counsel at the insurance company's expense. <i>Babcock & Wilcox Co. v. Am. Nuclear Insurers</i> , 131 A.3d 445 (2015).
RHODE ISLAND	Employers' Fire Ins. Co. v. Beals, 240 A.2d 397 (R.I. 1968) Aetna Cas. & Sur. Co. v. Kelly, 889 F. Supp. 535 (D.R.I. 1995) Labonte v. Nat'l Grange Mut. Ins. Co., 810 A.2d 250 (R.I. 2002) Quality Concrete Corp. v. Travelers Prop. Cas. Co. of Am., 43 A.3d 16 (R.I. 2012)	<i>Quality Concrete Corp. v. Travelers Prop. Cas. Co. of Am.</i> , 43 A.3d 16, 22 (R.I. 2012).
SOUTH CAROLINA	Twin City Fire Ins. Co. v. Ben Arnold-Sunbelt Beverage Co. of S.C., 433 F.3d 365 (4th Cir. 2005)	
SOUTH DAKOTA	Connolly v. Standard Cas. Co., 73 N.W.2d 119 (S. D. 1955) St. Paul Fire & Marine Ins. Co. v. Engelmann, 639 N.W.2d 192 (S.D. 2002)	In South Dakota, when an insurance company assumes defense under a reservation of rights, the policyholder may either hire independent counsel at its own expense or assist the insurance company in representation. <i>Connolly v. Standard Cas. Co.</i> , 73 N.W.2d 119, 122 (S.D. 1955). The Supreme Court of South Dakota held in <i>Engelmann</i> that counsel hired by an insurance company owed an enhanced obligation of good faith to its policyholder, and provided a specific example of when a conflict of interest may arise. <i>St. Paul Fire & Marine Ins. Co. v. Engelmann</i> , 639 N.W.2d 192 (S.D. 2002).
TENNESSEE		

STATE	CASES	DEVELOPMENTS IN 'RIGHT TO INDEPENDENT COUNSEL' CASES
TEXAS	<i>N. County Mut. Ins. Co. v. Davalos</i>, 140 S.W.3d 685 (Tex. 2004) <i>Hous. Auth. v. Northland Ins. Co.</i>, 333 F. Supp. 2d 595 (N.D. Tex 2004) <i>Unauthorized Practice of Law Committee v. Am. Home Assurance Co.</i>, 261 S.W.3d 24 (Tex. 2008) <i>Downhole Navigator, L.L.C v. Nautilus Ins. Co.</i>, 686 F.3d 325 (5th Cir. 2012) <i>Allstate Cnty. Mut. Ins. Co. v. Wootan</i>, 494 S.W.3d 825 (Tex. Ct. App. 2016)	Texas courts continue to follow <i>Davalos</i>, where the Supreme Court of Texas held that an "[insurance company] has the right to appoint defense counsel, to determine reasonable claims expenses, to control settlement, and to determine whether the matter is litigated or arbitrated." <i>N. County Mut. Ins. Co. v. Davalos</i>, 140 S.W.3d 685, 688 (Tex. 2004). The <i>Davalos</i> court also held that <i>some</i> conflicts of interest entitle a policyholder to select independent counsel, and listed the types of conflicts that may justify that right. <i>N. County Mut. Ins. Co. v. Davalos</i>, 140 S.W.3d 685, 688 (Tex. 2004); <i>see Unauthorized Practice of Law Committee v. Am. Home Assurance Co.</i>, 261 S.W.3d 24 (Tex. 2008) (following <i>Davalos</i> to find that a reservation of rights letter does not automatically create a conflict between the insurance company and policyholder); <i>Allstate Cnty. Mut. Ins. Co. v. Wootan</i>, 494 S.W.3d 825 (Tex. Ct. App. 2016) (addressing <i>Davalos</i> and whether the facts at issue gave rise to the right to independent counsel); <i>Downhole Navigator, L.L.C v. Nautilus Ins. Co.</i>, 686 F.3d 325 (5th Cir. 2012) (Texas law) (citing <i>Davalos</i> to find that a potential conflict of interest created by an insurance company's reservation of rights letter did not disqualify counsel offered by the insurance company to represent the policyholder).
UTAH	<i>Chatterton v. Walker</i>, 938 P.2d 255 (Utah 1997) <i>Burke v. Lewis</i>, 122 P.3d 533 (Utah 2005)	
VERMONT	<i>N. Sec. Ins. Co. v. Pratt</i>, No. 838-11-10 WNCV, 2011 WL 8472930 (Vt. Super. May 19, 2011)	A Vermont court found that a conflict of interest may arise when an insurance company fails to seek consent of the policyholder for a defense under a reservation of rights. <i>N. Sec. Ins. Co. v. Pratt</i>, No. 838-11-10 WNCV, 2011 WL 8472930 (Vt. Super. May 19, 2011). In addressing independent counsel, however, the court also held that so long as the insurance company appoints "a truly independent counsel," the policyholder does not have the right to select its own counsel because the "conflict is remedied." <i>Id.</i>
VIRGINIA		

STATE	CASES	DEVELOPMENTS IN 'RIGHT TO INDEPENDENT COUNSEL' CASES
WASHINGTON	Tank v. State Farm Fire & Cas. Co., 715 P.2d 1133 (Wash. 1986)Johnson v. Cont'l Cas. Co., 788 P.2d 598 (Wash. Ct. App. 1990)Weinstein & Riley, P.S. v. Westport Ins. Corp., No. C08-1694JLR, 2011 U.S. Dist. LEXIS 26369 (W.D. Wash. March 14, 2011)*Arden v. Forsberg & Umlauf, 373 P.3d 320 (Wash. Ct. App. 2016)	The <i>Tank</i> approach remains mostly unchanged in Washington. <i>Weinstein & Riley, P.S. v. Westport Ins. Corp.</i> , No. C08-1694JLR, 2011 U.S. Dist. LEXIS 26369, at *50-51 (W.D. Wash. March 14, 2011) (Washington law) ("Washington does not recognize an entitlement to 'independent counsel' . . . In Washington, an insured is not entitled by law to choose independent counsel to represent it where there is a potential conflict with the insurer in a reservation of rights situation"); <i>Arden v. Forsberg & Umlauf</i> , 373 P.3d 320, 327-32 (Wash. Ct. App. 2016) (<i>Tank</i> requirements to find that a policyholder did not have a right to independent counsel despite the defense attorney representing the insurance company in other cases).
WEST VIRGINIA	State ex rel. Universal Underwriters Ins. Co. v. Wilson, 801 S.E.2d 216 (2017)	In <i>Wilson</i> , the Supreme Court of Appeals of West Virginia specifically addressed a policyholder's right to independent counsel. <i>State ex rel. Universal Underwriters Ins. Co. v. Wilson</i> , 801 S.E.2d 216, 223 (2017). The court stated: "Generally, the insurer and insured have compatible interests and goals in responding to a tort claim. However, their interests may diverge at times, creating a potential or actual conflict of interest . . . [in this case the] evident conflict of interest made it necessary" for the policyholder "to retain independent counsel." <i>Id.</i>
WISCONSIN	Iowa Nat. Mut. Ins. Co. v. Liberty Mut. Ins. Co., 168 N.W.2d 610 (Wis. 1969) Grube v. Daun, 496 N.W.2d 106 (Wis. Ct. App. 1992) Jacob v. W. Bend Mut. Ins. Co., 553 N.W.2d 800 (Wis. Ct. App. 1996) HK Sys., Inc. v. Admiral Ins. Co., No. 03-C-0795, 2005 U.S. Dist. LEXIS 39939 (E.D. Wis. June 24, 2005)	
WYOMING		