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February 22, 2021

Sharon Anderson
County Counsel
Tort and Civil Rights Litigation Division
Contra Costa County Counsel's Office

Re: *National Railroad Passenger Corporation vs. Contra Costa County, et al.*
United States District Court for the Northern District of California
Case No. 4:20-cv-00334-YGR
Request for a Conflict Waiver

Dear Mr. Hurley:

Contra Costa County tendered its defense in the above-referenced litigation to Zurich American Insurance Company (Zurich). Zurich accepted the County's tender and asked me to defend the County in the action. In this case, the plaintiff "Amtrak," has sued the County and others seeking damages and declaratory relief for allegedly failing to defend and indemnify Amtrak in two underlying personal injury lawsuits. The litigation arises out of a December 20, 2015 accident in which Joel Mangiaracina's truck, sitting stopped on an at-grade railroad crossing, was struck by an Amtrak train and thrown about 150 feet into the Middle River, landing on Mackenzie Crane who was swimming in the river. Crane and Mangiaracina were trespassing on BNSF property. Prior to the accident the County and BNSF had entered into a License Agreement to allow the County to construct a Detour Road on BNSF property. The County denied a request by Amtrak to be defended. The County tendered its own defense to Flatiron and its insurer, Zurich, is now seeking to retain me to defend the County. While I would be the lead defense counsel for the County, in this representation the County would be my firm's client, and I would be defending the County against Amtrak. In representing the County, my fees would be paid by Zurich.

In running a conflict search through my firm's conflicts database, I learned of a case being handled in our Boston office, where we are defending Amtrak in a case where "Above All Transportation" picked up Amtrak's defense through an Indemnity agreement. Above All Transportation's interests are aligned with Amtrak's, and that case arises out of a motor vehicle accident where Michael DeAmicis (Plaintiff/Decedent) alleges to have suffered personal injuries while being transported by Above All Transportation, Inc., on July 16, 2014. The case was apparently delayed for a long period of time due to the unexpected death of plaintiff Michael DeAmicis on February 2, 2018, the complexity of his family connections, and the pandemic, causing a long delay in obtaining the appointment of a Guardian ad Litem and heading that case toward mediation. The next court date in that case is a May 12, 2021 Conference to Review Status in the Suffolk County Superior Court, Boston, MA. In that case Amtrak is my firm's client.



Thus, there is a waivable conflict in that my firm would be continuing its representation of Amtrak as a defendant in Boston, and here we would be taking on a representation adverse to Amtrak, representing the County against Amtrak. Neither I nor my firm would be taking any position adverse to the County here or in Boston. I have had no involvement in that litigation, and only learned of it by running the conflict check. If conflict waivers are authorized by both Amtrak (in Boston) and by the County here, my firm would impose an ethical wall such that there would be no communication, and no access to files or documents or information, regarding these two representations. These two representations are quite unrelated.

This letter is written to seek informed written consent for me to represent the County, pursuant to Rule 1.7 of the Rules of Professional Conduct (RPC) governing California lawyers. There is no risk that my representation of the County will be limited by my firm's responsibilities to or relationships with Amtrak. RPC 1.7 (b) No part of RPC 1.7 (c) is applicable to this request. A similar waiver is being sought from Amtrak by my Boston office. I believe that in this case I will be able to provide competent and diligent representation to the County, said representation is not prohibited by law, and this representation does not involve the assertion of a claim by one client against another client represented by my firm in the same litigation or other proceeding before a tribunal. RPC 1.7 (d)(1-3).

My firm does not represent Amtrak as a repeat ongoing client and does not have any sort of insider status or similar relationship to Amtrak. We only represent Amtrak, as described, pursuant to another entity having picked up Amtrak's defense through an Indemnity agreement. My loyalty would be to the County, and not to Amtrak, and I would provide a zealous and vigorous defense to the County, against Amtrak. My firm's representation of Amtrak was unknown to me prior to running the above conflict check, and I am fully capable of zealously representing the County irrespective of my firm's single relationship with Amtrak out of our Boston office.

Very truly yours,

Charles H. Horn

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