

EXHIBIT “F”

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June 29, 2010

Small Smiles Holding Company
ATTN.: Linda S. Zoeller
Assistant Vice President, Legal
618 Church Street, Suite 520
Nashville, TN 37219

Havens et al. v. Dighton et al.

Insured: Small Smiles Holding Company
Insurer: National Union Fire Insurance Company of Pittsburgh, PA
Policy: Dentists Liability Policy No. DNU3375848 (the "Entities Policy")
No.: (September 26, 2009 to September 26, 2010)
Policy: Dentists Liability Policy No. DNU6360128 (the "Individuals Policy")
No.: (December 1, 2009 to December 1, 2010)
File Nos.: 2009106770 (DNU3375848 policy) – Intercare File – Chartis Claim TBD
2009106771 (DNU6360128 policy) – Intercare File – Chartis Claim TBD

Dear Ms. Zoeller:

Chartis Claims, Inc. ("Chartis") is the claims administrator for National Union Fire Insurance Company of Pittsburgh, PA ("National Union"), which issued the following policies placed through the Dentist's Advantage Program to Small Smiles Holding Company ("SSHC"):

- Dentists Liability Policy No. DNU3375848, for the policy period of September 26, 2009 to September 26, 2010 (the "Entities Policy"); and
- Dentists Liability Policy No. DNU6360128, for the policy period of December 1, 2009 to December 1, 2010 (the "Individuals Policy") (collectively, the "Policies").

As you know, National Union has undertaken to provide a defense to defendants Chase Dighton ("Dighton"), Small Smiles of East Albuquerque, P.C. ("SS Albuquerque") and FORBA Dental Management Company ("FORBA DMC") (collectively, the "Defendants") in the lawsuit styled *Havens et al. v. Dighton et al.*, Case No. CV-2009-14194, currently pending in the Second Judicial District Court, County of Bernalillo, State of New Mexico (the "Havens Action").

The purpose of this letter is to advise you of National Union's complete reservation of rights with respect to insurance coverage under the Professional Liability Coverage Part to each of the Policies concerning the claims asserted in the Havens Action. Additionally, we write to disclaim coverage under the Billing Errors and Omissions Coverage Part to the Entities Policy, insofar as the insurance specified therein is not implicated in the Havens Action.

As previously communicated, Intercare Insurance Services, Inc. ("Intercare"), on behalf of National Union, acknowledged, subject to the terms, conditions and limitations contained in each of the policies identified herein, a current defense obligation with respect to the Havens Action as to Dighton under the Individuals Policy and SS Albuquerque and FORBA DMC under the Entities Policy. That defense is subject to a full and complete reservation of rights by National Union as set forth in greater detail herein. We value you as a customer and appreciate your business, however, and as discussed more fully below, we must inform you that certain of the claims asserted in the Havens Action fall outside the scope of the applicable coverages under the Policies.

SUMMARY OF COVERAGE POSITION

For the reasons set forth in more detail below, no coverage will be accorded under either of the Policies as to any damages alleged in the Havens Action that are not the result of a "dental incident", as that term is defined in each of the Policies. Moreover, the Policies do not provide coverage for any punitive or statutory damages sought by plaintiffs in the Havens Action.

Additionally, National Union further reserves all rights as to: (1) the insured status, and the extent of the insured status, of one or more of the Defendants under the Policies; (2) the applicability of Exclusion B, which bars coverage for "dental incidents" arising out of any dishonest, fraudulent, criminal, or knowingly wrongful acts, errors, or omissions; (3) the applicability of Exclusion O, which bars coverage for an expected or intended "dental incident"; (4) the applicability of Exclusion A, which bars coverage for "dental incidents" that occurred prior to the inception dates of the Policies and which any insured knew or should have known would result in, or had resulted in, a claim; (5) the applicability of Exclusions K(1) and/or I, which bar coverage for a "dental incident" arising out of the unlicensed dispensation of drugs or the administration of "general anesthesia" by unlicensed personnel, respectively; and (6) the Other Insurance Clauses of the Policies.

Accordingly, and to the extent that it is determined that coverage is not properly available under any of the Policies as to the Havens Action, National Union reserves its rights to withdraw the defense it is currently providing and/or to seek reimbursement of any and all defense costs expended in connection with the same.

Further, and not only as to the Havens Action, but also with respect to all similar lawsuits that are pending in other jurisdictions (including the putative class action complaints that have been filed in Ohio and Oklahoma), National Union is investigating whether the limits of insurance listed in Item 5 of the Declarations and the coverages identified therein for both Policies accurately reflect the parties' intent at the time the Policies were issued with respect to the applicable limits of the Policies. In addition, National Union is also investigating whether material misrepresentations and/or omissions were made by SSHC and/or any of the insureds during the underwriting of each of the Policies. As National Union's investigation remains ongoing, National Union reserves all rights to: (1) claim that the limits of insurance listed in the Declarations of both Policies are inaccurate and to seek reformation; and/or (2) seek, based upon its investigation, rescission of the Policies.

After you have reviewed the letter, please provide me with the additional information identified herein and well as any other information you would like National Union to consider. Also, if you have any questions about the letter, please contact me.

In considering your request for coverage, we have carefully reviewed the Policies referenced above, as well as the allegations asserted in the complaint filed in the Havens Action. No other policies were considered. If you assert a right to coverage under another policy issued by any other member company of Chartis, please submit notice pursuant to the notice provisions contained in that policy.

BACKGROUND

A. The Havens Action

Based on the information we have received to date, the following sets forth a summary of the allegations in the Havens Action. We recognize that the allegations in the Havens Action are unsubstantiated and we do not mean to suggest there is any merit to the same. Nevertheless, for ease of reference, we summarize those allegations that are relevant to our coverage position below.

On or about December 2, 2009, Lanae Havens ("Havens"), individually and as next friend and parent of Konnor Havens, a minor and Martin Havens (collectively, "Plaintiffs") filed a complaint (the "Complaint") in the Havens Action with the Second Judicial District Court, County of Bernalillo, State of New Mexico. The Complaint alleges that on or about July 13, 2007, Konnor Havens, a minor, underwent a "routine root canal" that was performed by Dighton at the SS Albuquerque clinic. Plaintiffs generally allege that Dighton, the agent or apparent agent of SS Albuquerque, performed, during the course of the treatment, unauthorized, unnecessary and painful procedures without administering the proper anesthetic.

Count I of the Complaint sounds in Negligence as to Dighton. Specifically, Plaintiffs allege that Dighton owed Plaintiffs a duty of reasonable care, which he purportedly breached by administering "unnecessary and extremely painful procedures" that were performed "without the requisite consent and without the proper anesthetic." As a result of Dighton's alleged negligent acts or omissions, Plaintiffs claim to have sustained unspecified "severe and grievous personal injuries." Plaintiffs further allege that Dighton's acts were "reckless, malicious, wanton, willful and committed with a conscious disregard of Plaintiffs' welfare, safety and rights" such that they are entitled to recover punitive damages, in addition to compensatory and other damages and/or relief.

Count II of the Complaint sounds in Vicarious Liability as to SS Albuquerque. Specifically, Plaintiffs allege that SS Albuquerque "is vicariously liable for the actions and conduct of" Dighton in that SS Albuquerque allegedly owed Plaintiffs the duty to use ordinary and appropriate care with respect to the treatment of the minor patient, which it breached through its unspecified acts or omissions. As a result of SS Albuquerque's alleged negligent acts or omissions, Plaintiffs claim to have sustained "severe and grievous personal injuries." Plaintiffs further allege that SS Albuquerque's acts were "reckless, malicious, wanton, willful and committed with a conscious disregard of Plaintiffs' welfare, safety and rights" such that they are entitled to recover punitive damages, in addition to compensatory and other damages and/or relief.

Count III of the Complaint sounds in Vicarious Liability as to FORBA DMC. Plaintiffs generally allege that FORBA DMC, the purported franchisor and manager of SS Albuquerque, "enabled, authorized and ratified the negligent acts and or omissions of" SS Albuquerque and Dighton and so "is vicariously liable for [their] ... actions and conduct...." FORBA DMC allegedly owed Plaintiffs a duty of reasonable care, which it breached through its unspecified acts. As a result of FORBA DMC's alleged

negligent acts, Plaintiffs claim to have sustained “severe and grievous personal injuries.” Plaintiffs further allege that FORBA DMC’s acts were “reckless, malicious, wanton, willful and committed with a conscious disregard of Plaintiffs’ welfare, safety and rights” such that they are entitled to recover punitive damages, in addition to compensatory and other damages and/or relief.

Count IV of the Complaint sounds in allegations of Severe Emotional Distress as against all Defendants. Specifically, Plaintiffs allege that Defendants’ “acts were outrageous and extreme and caused Plaintiffs to suffer severe emotional distress” such that they are entitled to recover punitive damages, in addition to compensatory and other damages and/or relief.

Count V of the Complaint generally alleges violation of the New Mexico Fair Practices Act, NMSA 1978, § 57-12-1, *et seq.*, as against all Defendants. In addition to statutory damages, Plaintiffs further seek other damages and relief.

Count VI of the Complaint sounds in allegations of Fraud as against all Defendants. Specifically, Plaintiffs allege that Defendants “performed and encouraged to be performed unnecessary surgical procedures ... in a scheme to increase profits” that resulted in fraud and for which Defendants “should be required to pay all damages due to such fraud” including punitive, compensatory and other damages and relief.

The second Count VI (referred to herein as the Seventh Count) of the Complaint sounds in allegations of Strict Liability for Defective Product as against all Defendants. Specifically, Plaintiffs allege that FORBA DMC, as franchisor, designed and implemented a series of practices, protocols, standards and procedures, all of which constitute a “product” that was “placed into the stream of commerce and adopted, implemented and executed” by the Small Smiles franchises nationwide, including SS Albuquerque. Plaintiffs allege that the Defendants’ “product” was defective and presented an unreasonable risk of injury to patients, including the Plaintiffs, who sustained serious injury and other damages. Plaintiffs further allege that FORBA DMC’s “products were designed, manufactured and marketed in such a manner as to have been done recklessly, maliciously, willfully, wantonly and with a conscious disregard of Plaintiffs’ welfare, safety and rights.” Accordingly, Plaintiffs allege that the Defendants are strictly liable for injuries and other harm caused by Defendants’ defective product. Plaintiffs seek compensatory damages, punitive damages, attorneys’ fees, pre- and post-judgment interest, costs and other relief.

THE POLICIES

National Union issued Claims Made Dentists Liability Policy No. DNU3375848 to SSHC for the policy period of September 26, 2009 to September 26, 2010 (the “Entities Policy”). The Entities Policy provides Professional Liability Coverage and Billing Errors and Omissions Coverage, only. The retroactive date with respect to Professional Liability Coverage is February 1, 2001 and the retroactive date with respect to Billing Errors and Omissions Coverage is September 26, 2007.

National Union also issued Claims Made Dentists Liability Policy No. DNU6360128 to SSHC for the policy period December 1, 2009 to December 1, 2010 (the “Individuals Policy”). The Individuals Policy provides Professional Liability Coverage, only and has a general retroactive date of February 1, 2000 and specific, varying retroactive dates for each Individual Named Insured Dentist.

Attached to this letter as Exhibit 1 are the relevant policy provisions for your convenient review. Except where specified, the language of the provisions set forth in Exhibit 1 is identical in each of the Policies. Kindly refer to the Policies for their complete terms and conditions.

COVERAGE ANALYSIS

As addressed in greater detail below, no coverage under the Policies will be accorded to the extent that the allegations in the Complaint do not constitute “dental incidents” as that term is defined therein or coverage is otherwise barred by operation of one or more exclusions in the Policies.

A. Insured Status of the Named Defendants

1. Insured Status Under the Entities Policy

a. FORBA DMC

Item 1 of the Declarations page of the Entities Policy identifies the First Named Insured as “Small Smiles Holding Company”. The Entities Policy includes a Schedule of Named Insureds Endorsement (unnumbered), which amends Item 1 of the Declarations to include as Named Insureds those listed on the Schedule on File with Agent. A Schedule of “Owners - Entity renewal 9/26/09” lists, among others, FORBA Holdings, LLC and FORBA Services, Inc. Notably, FORBA DMC is not identified therein.¹

Section III of the Entities Policy [Who Is An Insured] provides that if the First Named Insured is listed on the Declarations page as a limited liability company, “you and your members are insureds, but only with respect to the conduct of your ‘dental business’.” Section III also provides that if the Named Insured is an organization other than a partnership, joint venture or limited liability company, it is an insured only with respect to the conduct of its “dental business”. Accordingly, coverage for Named Insured business entities under the Entities Policy applies only with respect to the conduct of their “dental business”

At present, it is not clear whether FORBA DMC is entitled to insured status under the Entities Policy and National Union hereby reserves all rights with respect to the insured status of FORBA DMC and whether the conduct alleged by the Plaintiffs arises from the conduct of its “dental business”.

b. SS Albuquerque

The Additional Insured Endorsement to the Entities Policy amends the Who Is An Insured section of that policy to include as an insured the person or entity shown in the Schedule on File with the Agent, but only with respect to their liability arising out of the conduct of “your business”. “Your” is defined, on the first page of the Entities Policy’s Professional Liability Coverage Part, to mean the First Named Insured identified on the Declarations page, or SSHC. The Schedule of Additional Insureds identifies a number of individual nationwide dental clinics, typically operating under the brand name “Small Smiles”, and includes “Small Smiles of East Albuquerque, P.C.”, among others. In that regard, we understand that SSHC’s business includes management of the dental practice of dental clinics, dentists

¹ We understand that the Plaintiffs have apparently commenced suit against a non-existent, fictitious entity. It is likely, however, that Plaintiffs have erroneously identified FORBA DMC, which does not exist, in lieu of one of the FORBA entities specified in the Entities Policy, or another entity altogether.

and other dental professionals, and certain of the allegations in the Complaint may potentially arise out of SSHC's dental business (e.g., the Second Count). Thus, it appears that SS Albuquerque is an additional insured in connection with certain allegations in the Complaint but would not be an additional insured to the extent the Complaint contains allegations that do not arise out of SSHC's dental business. Accordingly, National Union hereby reserves all rights with respect to the insured status of SS Albuquerque to the extent it is held liable for conduct that arises from the conduct of SSHC's business.

c. Dighton

The Entities Policy does not provide coverage for individual dentists. Accordingly, there is no coverage for Chase Dighton under the Entities Policy.

2. Insured Status Under the Individuals Policy

a. Dighton

The Individuals Policy includes a Schedule of Named Insureds Endorsement (unnumbered), which amends Item 1 of the Declarations to include as Named Insureds those listed on the Schedule on File with Agent. It appears that although "Chase Dighton" is not identified in the Schedule, "Steven Dighton" is listed therein as a Named Insured.

Please advise whether Chase Dighton is the same person as Steven Dighton. Pending confirmation that Chase Dighton is listed on the Schedule, National Union hereby reserves all rights with respect to Dighton's insured status under the Individuals Policy.

b. FORBA DMC and SS Albuquerque

The Schedule identifying Named Insureds annexed to the Individuals Policy does not include FORBA DMC, FORBA Holdings, FORBA Services or SS Albuquerque. Thus, it does not appear that that FORBA DMC, FORBA Holdings, FORBA Services or SS Albuquerque qualify as insureds under the Individuals Policy. Accordingly, National Union disclaims any obligation to defend or indemnify FORBA DMC, FORBA Holdings, FORBA Services or SS Albuquerque under the Individuals Policy with respect to the Havens Action.

B. The Defense and Indemnity Provisions of the Professional Liability Coverage Agreement of the Policies

The Professional Liability Coverage Part to each of the Policies provides that National Union will pay on behalf of the insured those sums that the insured becomes legally obligated to pay as "damages" because of a "dental incident". The "dental incident" must occur on or after the Retroactive Date and prior to the end of the "policy period" and the "claim" for "damages" must be first made against an insured, in writing, during the "policy period". Although National Union has the right and duty to defend the insured against any "claim" to which the Policies apply, National Union has no duty to defend against any "claim" to which the Policies do not apply.

Accordingly, while National Union is presently providing a defense to Defendants in the Havens Action, to the extent it is determined that Defendants are not entitled to insured status and/or the Policies do not

apply to the claims asserted in the Havens Action, National Union reserves all rights under each of the Policies as more fully set forth herein.

C. Certain of the Allegations in the Havens Action Do Not Constitute “Dental Incidents” and, Thus, Do Not Potentially Trigger Coverage Under the Policies

As noted above, the Policies provide that National Union will pay on behalf of the insured those sums that the insured becomes legally obligated to pay as damages because of a “dental incident”. “Dental incident” is defined in the Policies as any act, error or omission in the rendering of or failure to render “professional services” by an insured or by any person for whose acts, errors or omissions the insured is held legally liable. “Professional services” is defined as dental services provided to others by a person trained and qualified to perform those services pursuant to a valid and unrestricted dental, dental hygiene, or dental assisting certificate or license.

1. Allegations of Infliction of Emotional Distress Do Not Constitute “Dental Incidents”

In Count IV of the Complaint, Plaintiffs generally allege that the Defendants’ “outrageous and extreme” acts caused Plaintiffs to suffer severe emotional distress. Such allegations, however, do not constitute “dental incidents” because they do not allege an act, error or omission in the rendering of or failure to render “professional services”, which is defined as dental services provided to others by certain trained and qualified individuals.

Accordingly, allegations that Defendants inflicted severe emotional distress do not trigger coverage under the Policies and National Union disclaims coverage for the claims alleged in Count IV of the Complaint.

2. Allegations of Unfair Trade Practices in Violation of New Mexico Law Do Not Constitute “Dental Incidents”

In Count V of the Complaint, Plaintiffs generally allege that the Defendants “engaged in unfair trade practices in violation of the New Mexico Fair Practices Act.” Such allegations, however, do not constitute “dental incidents” because they do not allege an act, error or omission in the rendering of or failure to render “professional services”, which is defined as dental services provided to others by certain trained and qualified individuals.

Thus, allegations of state law violations are not “dental incidents” and do not trigger coverage under the Policies and National Union disclaims coverage for the claims alleged in Count V of the Complaint.

3. Allegations That Defendants Implemented a Scheme to Increase Profits Do Not Constitute “Dental Incidents”

In Count VI of the Complaint, Plaintiffs generally allege that “in [furtherance of] a scheme to increase profits” that “resulted in fraud” the Defendants encouraged the performance of “unnecessary surgical procedures.” Such allegations, however, do not constitute a “dental incident” because they do not allege an act, error or omission in the rendering of or failure to render “professional services”, which is defined as dental services provided to others by certain trained and qualified individuals.

Accordingly, allegations that the Defendants participated in a scheme that resulted in fraud do not constitute “dental incidents” and do not trigger coverage under the Policies and National Union disclaims coverage for the claims alleged in Count VI of the Complaint.

4. Allegations of “Product Liability” Do Not Constitute “Dental Incidents”

In Count Seven (erroneously identified as a second Count VI) of the Complaint, Plaintiffs generally allege that FORBA DMC “designed and implemented a series of practices, protocols, standards and procedures” constituting a defective “product” that was implemented by SS Albuquerque and resulted in injury to the Plaintiffs. Further, it is alleged that FORBA DMC’s design, manufacture and marketing of the defective product was conducted “in such a manner as to have been done recklessly, maliciously, willfully, wantonly and with a conscious disregard of Plaintiffs’ welfare, safety and rights.” Such allegations, however, do not constitute “dental incidents” because they do not allege an act, error or omission in the rendering of or failure to render “professional services”, which is defined as dental services provided to others by certain trained and qualified individuals.

Accordingly, allegations that Defendants designed and implemented a defective “product” do not constitute “dental incidents” and do not trigger coverage under the Policies and National Union disclaims coverage for the claims alleged in Count Seven (erroneously identified as a second Count VI) of the Complaint..

D. Certain of the Allegations in the Havens Action May Be Barred From Coverage by Operation of Policy Exclusions

1. Coverage May Be Barred by Exclusion B

Exclusion B under each of the Policies bars coverage for “dental incidents” arising out of any dishonest, fraudulent, criminal, or knowingly wrongful acts, errors, or omissions committed by or at the direction of any insured.

In relevant part, Plaintiffs generally allege that Defendants engaged in: (1) medically unnecessary procedures performed by Dighton and for which SS Albuquerque and/or FORBA DMC are vicariously responsible (Counts I, II and III); (2) unfair trade practices in violation of New Mexico law (Count V); (3) a scheme to perform medically unnecessary procedures in order to fraudulently increase profits (Count VI); and (4) the design and implementation of a defective “product” in a reckless, malicious and wanton fashion so as to constitute conscious disregard of Plaintiffs’ “welfare, safety and rights” (Count Seven).

Thus, even assuming, *arguendo*, that the allegations in connection with Counts V, VI and Seven constitute “dental incidents” (which they do not as discussed above), Exclusion B may bar coverage to the extent that such allegations arise out of alleged dishonest, fraudulent, criminal or knowingly wrongful acts committed by or at the direction of one or more of the Defendants. In that regard, it appears that the Plaintiffs’ allegations of unfair trade practices and product defect may constitute allegations of dishonesty, insofar as it appears that Plaintiffs are alleging that Defendants engaged in unfair, deceptive and/or misleading business practices. Moreover, the implementation of a scheme to defraud by performing medically unnecessary procedures, as alleged in the Complaint, may constitute allegations of dishonest, fraudulent and knowingly wrongful acts.

Additionally, Exclusion B may also bar coverage as to Counts I, II and III, insofar as Plaintiffs' allegations of medically unnecessary procedures may constitute allegations of dishonesty, as they are alleged to have been falsely represented to be medically necessary, and/or fraudulent and knowingly wrongful acts, to the extent they are alleged to have been undertaken in order to defraud (as alleged in Count VI).

Consistent with the foregoing, National Union hereby reserves all rights as to the applicability of Exclusion B to bar coverage under the Policies.

2. Coverage May Be Barred by Exclusion O

Exclusion O of the Policies bars coverage for a "dental incident" expected or intended by any insured or by any person for whose acts, errors or omissions an insured may be held liable.

The Complaint alleges that: (1) Dighton performed medically unnecessary procedures for which SS Albuquerque and FORBA DMC are vicariously responsible (Counts I, II and III); (2) the Defendants performed and encouraged to be performed medically unnecessary procedures in connection with their alleged scheme to defraud (Count VI); (3) Defendants' "outrageous and extreme" acts caused Plaintiffs to sustain severe emotional distress (Count IV); (4) the Defendants engaged in unfair trade practices prohibited under New Mexico law (Count V); and (5) FORBA DMC designed and implemented, along with SS Albuquerque, a defective "product" that presented an "unreasonable risk of injury to patients" (Count Seven).

To the extent that Plaintiffs' allegations of medically unnecessary dental procedures consist only of alleged intentional acts and the intent to harm on the part of the Defendants, Exclusion O bars coverage (*i.e.*, Counts I, II and III).

Moreover, and even if the allegations in connection with Counts IV, V, VI and Seven constitute "dental incidents" (which for the reasons outlined above they do not), Exclusion O may bar coverage to the extent that any such "dental incidents" were intended to or could have been reasonably expected to occur as a result of Defendants' acts, errors or omissions. To that end, Exclusion O may bar coverage as to the scheme to defraud (*i.e.*, Count VI) if Defendants' acts in furtherance of the scheme were intended to or otherwise expected to result in a "dental incident". Exclusion O would also bar coverage as to any allegations of intentional infliction of emotional distress, or as to any emotional distress that may have been reasonably expected by the Defendants as a result of their acts, errors or omissions (*i.e.*, Count IV). Nor would coverage be afforded per the exclusion to the extent that Defendants' alleged design of the defective product (*i.e.*, Count Seven) was intentional or otherwise could have been reasonably expected to result in a "dental incident".

Accordingly, National Union hereby reserves all rights as to the application of Exclusion O.

3. Coverage May Be Barred by Exclusion A

Under Exclusion A of the Policies, there is no coverage for any "dental incident" that occurred prior to the inception date of the Policies if any insured under the Policies knew or should have known that the "dental incident" could result in, or had resulted in, a claim. The inception date for the Entities Policy is September 26, 2009, whereas the inception date for the Individuals Policy is December 1, 2009.

The Complaint alleges that dental procedures were performed by Dighton at SS Albuquerque on or about July 13, 2007. Therefore, to the extent one or more of the Defendants knew or reasonably should have known that “dental incidents” had occurred and that the “dental incidents” could result in, or had resulted in, a claim, there is no coverage under the Entities Policy, as the “dental incidents” occurred prior to September 26, 2009, and no coverage under the Individuals Policy, as the “dental incidents” occurred prior to December 1, 2009.

Additionally, and as discussed in more detail in Section H (entitled “Rescission”) to this letter, National Union has become aware that, in January 2010, FORBA Holdings entered into a settlement with the United States of America, acting through the United States Department of Justice (“DOJ”) and on behalf of the Office of Inspector General of the Department of Health and Human Services (“HHS”) (collectively, the “United States”) and relators in three *qui tam* actions that were filed in 2007 and 2008 to settle claims by the United States and 22 states plus the District of Columbia that FORBA Holdings and its dental clinics and personnel committed Medicaid fraud.

As explained below, we are investigating whether or to what extent these allegations have any relationship to the allegations in the Havens Action, as well as other actions that have been or are in the process of being filed against SSHC and its related companies and employees. While our investigation is pending, National Union reserves its right to disclaim coverage under Exclusion A to the extent one or more of the Defendants knew or reasonably should have known that “dental incidents” had occurred prior to the inception dates of the Policies and that the “dental incidents”, including the acts being investigated and complained of in the *Qui Tam* actions, could result in, or had resulted in, a claim.

4. Coverage May Be Barred by Exclusion K(1) and/or Exclusion I

The Complaint alleges that Dighton performed unnecessary and painful procedures without the proper anesthetic (Count I) and that SS Albuquerque and FORBA DMC therefore are vicariously liable (Counts II and III, respectively).

Exclusion K(1) of each of the Policies bars coverage for a “dental incident” arising out of the prescribing or dispensing of any drugs, pharmaceuticals or controlled substances by anyone without the appropriate license, registration or certification.

Exclusion I of each of the Policies bars coverage for a “dental incident” which involves the use of intravenous or intramuscular injections or “general anesthesia”. “General anesthesia” is defined to include deep sedation and to mean a controlled state of depressed consciousness or unconsciousness, accompanied by partial or complete loss of protective reflexes, produced by a pharmacologic or non-pharmacologic method or combination thereof. Exclusion I, however, does not apply if, in pertinent part, the “general anesthesia” is administered by a licensed provider of anesthetics.

To the extent that drugs, pharmaceuticals, controlled substances and/or anesthetics, were not administered by a licensed provider, coverage is barred by Exclusions K(1) and/or I. Accordingly, National Union reserves all rights as to the application of Exclusions K(1) and/or I to bar coverage as to qualified “dental incidents”.

E. The Allegations of the Complaint do not Trigger Coverage Under the Billing Errors and Omissions Coverage Part of the Entities Policy

In addition to Professional Liability coverage, the Entities Policy includes coverage for Billing Errors and Omissions. Specifically, the Coverage Part provides that National Union will pay those sums the insured becomes legally obligated to pay as "billing damages" resulting from a "wrongful act" to which the policy applies. "Billing damages" is defined as any monetary amount which the insured is legally obligated to pay as a result of a "billing claim", including sums paid as awards, judgments, settlements and civil fines and penalties imposed by a "government entity". "Billing claim" is defined as: (1) a demand for money or services, brought by or on behalf of any "government entity" or commercial payor against the insured seeking "billing damages" for a "wrongful act"; (2) commencing an audit or investigation of a "wrongful act"; or (3) seeking injunctive relief on account of a "wrongful act".

The allegations in the Complaint do not trigger a duty to defend or indemnify under the Billing Errors and Omissions Coverage part because they do not constitute a "billing claim". The Complaint is not a demand for money or services brought by or on behalf of a government entity or commercial payor; does not constitute the commencement of an audit or investigation of a "wrongful act" and does not seek injunctive relief on account of a "wrongful act". Moreover, the Complaint does not seek "billing damages", which is defined as any monetary amount not in excess of the applicable limit of liability (\$25,000 "Each Wrongful Act" and in the "Aggregate") that the insured is legally obligated to pay as a result of a "billing claim". Because the Complaint does not constitute a "billing claim", there are no "billing damages" covered under this coverage part.

Accordingly, National Union has no duty to defend or indemnify with respect to the Havens Action under the Billing Errors and Omissions Coverage Part of the Entities Policy.

F. No Coverage for Punitive or Statutory Damages or for Recovery of Fees Under the Policies

Plaintiffs generally seek an award of punitive damages as to all Counts asserted in the Complaint, except as to Count V (violation of New Mexico law) for which Plaintiffs seek an award of statutory damages. The Policies, however, generally do not afford coverage for punitive damages or civil or criminal penalties, fines or sanctions. Accordingly, National Union has no duty to defend or indemnify the Defendants with respect to any punitive and/or statutory damages claim asserted in the Havens Action.

Additionally, the Policies do not respond to damages, if any, sought by the Plaintiffs for recovery of payment for "professional services"

National Union reserves all of its rights consistent with the foregoing, accordingly.

G. Other Insurance

The Other Insurance clauses of the Policies provide that if other valid and collectible insurance is available to an insured for "damages" National Union covers under the Policies, then the Policies are excess over any other such insurance. When the Policies are excess over other insurance, National Union has no duty to defend against any "suit" if any other insurer has a duty to defend against that "suit". However, if no other insurer defends, National Union will undertake the defense but will be entitled to the rights of the insured against all those other insurers. When the Policies are excess, National Union will pay, up to the applicable limits of insurance, the amount of the loss that exceeds the

sum of the total amount that all such other insurance would pay for the loss in the absence of the Policies. If other insurance is also excess, National Union will share the remaining loss with the other insurance.

Assuming coverage was not otherwise barred (as explained above), to the extent there is other valid and collectible insurance that responds to the claims in the Havens Action, the Policies arguably apply excess of such other insurance and National Union would have no duty to defend. National Union reserves its right as to the applicability of the Other Insurance clauses of the Policies, accordingly.

H. Rescission

As you know, by letter dated June 18, 2010, your counsel at the law firm of King & Spalding provided our counsel in these matters, Sedgwick, Detert, Moran & Arnold LLP, with an update concerning various claims against Small Smiles² including putative class action lawsuits filed against Small Smiles in Ohio and Oklahoma. At this point we are aware of the following claims against Small Smiles:

- *Parnell et al. v. FORBA Holdings, LLC et al.*, Civil Action No. 10-CV-00172 (JCG) (N.D. Ohio) (the “Parnell Class Action”);
- *Hernandez et al. v. FORBA Holdings, LLC et al.*, Case No. CJ-2010-1632 (Dist. Ct. of Oklahoma Co., State of Oklahoma) (the “Hernandez Class Action”); and
- *Havens et al. v. Dighton, et al.*, No. CV 2009 14194 (Second Judicial Dist. Ct., County of Bernalillo, State of New Mexico) (the “Havens Action”) – the claim that prompted us to write this letter (the Parnell Class Action, the Hernandez Class Action and the Havens Action are collectively referred to herein as the “Underlying Actions”).

National Union is concerned that, prior to National Union issuing, in 2008, and then renewing, in 2009, four Dentists Liability Policies (two for each year) to SSHC, SSHC and/or its related entities may have known of facts that were material to the risk that National Union was insuring – and may have failed to disclose that information to National Union or to Affinity Insurance Services, Inc. (“AIS”).

In particular, it has come to our attention that in January 2010, Small Smiles entered into a \$24 million settlement agreement (plus interest) (the “Medicaid Fraud Settlement”) with the United States and relators in three *qui tam* actions (the “*Qui Tam* Action”)³ to settle claims by the United States and 22 states plus the District of Columbia that Small Smiles committed Medicaid fraud. We also understand that the Medicaid Fraud Settlement was the product of an investigation by the United States and various States (the “Medicaid Fraud Investigation”). We are concerned that Small Smiles may have known

² Please note that, for the purposes of this letter, “Small Smiles” refers to Small Smiles Holding Company, LLC, FORBA Holdings, LLC, FORBA Services, Inc., Small Smiles of Toledo, LLC and all other Small Smiles clinics and Small Smiles dentists and further includes each of their parents, subsidiaries, divisions, departments, offices, predecessors, successors, assigns, officers, directors, employees, contractors, subcontractors, attorneys and/or agents.

³ For the purposes of this letter, the *Qui Tam* Actions refer to: *United States ex rel. McDaniel v. FORBA Holdings, LLC*, No. 07-3416 (D. Md.), filed December 21, 2007; *United States of America and Commonwealth of Virginia ex rel. Angela Crawford v. Small Smiles of Roanoke LLC*, Case No. 7:08-cv-00370 (W.D. Va.), filed June 12, 2008; and *John J. Haney o/b/o United States of America v. Children’s Medicaid Dental of Columbia, LLC d/b/a “Small Smiles”*, Case No. 3:08-CV2562 (D.D.C.), filed July 16, 2008.

about the Medicaid Fraud Investigation prior to the issuance of the National Union policies and not disclosed that (or the existence of the *qui tam* actions) to National Union or AIS.

If Small Smiles is in possession of facts, documents and/or communications⁴ which indicate that, prior to the issuance of the National Union policies, Small Smiles was not aware of the Medicaid Fraud Investigation or any of the *Qui Tam* Actions and/or that Small Smiles was aware of Medicaid Fraud Investigation or any of the *Qui Tam* Actions but disclosed them to National Union and/or AIS, provide us with those facts, documents and/or communications as soon as possible.

Accordingly, National Union is reserving its right to rescind, including its right to seek a judicial decision rescinding and an order compelling Small Smiles to refund to National Union any monies it paid to Small Smiles or on behalf of Small Smiles (including all indemnity and all Allocated Loss Adjustment Expenses) under the following insurance policies that National Union issued to SSHC as the First Named Insured:

- Dentists Liability Policy No. DNU3375848 (policy period September 26, 2009 to September 26, 2010);
- Dentists Liability Policy No. DNU3375848 (policy period September 26, 2008 to September 26, 2009);
- Dentists Liability Policy No. DNU6360128 (policy period December 1, 2009 to December 1, 2010); and
- Dentists Liability Policy No. DNU6360128 (policy period December 1, 2008 to December 1, 2009) (collectively, the "National Union Policies").

At this point, National Union's investigation is ongoing and we would appreciate any information that Small Smiles can provide to shed light on these issues.

REQUEST FOR INFORMATION AND DOCUMENTS

National Union requests that Small Smiles provide National Union with the following information in Small Smiles's possession or control in order to assist National Union with completing its investigation:

1. All pleadings, discovery and motion papers exchanged in the Havens Action.
2. All reports and/or correspondence prepared by defense counsel concerning the Havens Action.
3. All documents and/or communications maintained Small Smiles referring or relating to the treatment of Konnor Havens.
4. All documents maintained by Small Smiles referring or relating to "Steven Dighton" or "Chase Dighton".

⁴ Please note that "documents" and "communications" as used herein, includes both paper documents and electronically stored information and emails and attachments thereto.

5. All correspondence and/or documents exchanged between Small Smiles and Lanae Havens, Martin Havens and/or Konnor Havens, or any of their representatives.
6. All reports generated by Small Smiles referring or relating to any investigation as to the Plaintiffs' allegations in the Havens Action.
7. All manuals, written guidelines, written procedures and/or documentation prepared by Small Smiles, or on its behalf, concerning dental operations and/or dental practices at any of the nationwide Small Smiles clinics, including SS Albuquerque.
8. All documents and/or communications generated by Small Smiles referring or relating to patient care at any of the nationwide Small Smiles clinics, including SS Albuquerque.
9. All documents and/or communication generated by Small Smiles referring or relating to billing guidelines at any of the nationwide Small Smiles clinics, including SS Albuquerque.
10. All documents and/or communications generated by Small Smiles referring or relating to any type of quota or production goal, whether for treatment, billing or otherwise, at any of the nationwide Small Smiles clinics, including SS Albuquerque.
11. All documents and/or communications generated by Small Smiles referring or relating to the compensation, bonus and/or salary structure in place at any of the nationwide Small Smiles clinics, including SS Albuquerque.
12. All documents and/or communications generated by Small Smiles referring or relating to hiring practices at any of the nationwide Small Smiles clinics, including SS Albuquerque.
13. All documents and/or communications generated by Small Smiles referring or relating to the management of any of the nationwide Small Smiles clinics, including SS Albuquerque.
14. All documents and/or communications which indicate that, prior to the issuance of the National Union Policies, Small Smiles was not aware of the Medicaid Fraud Investigation or any of the *Qui Tam* Actions and/or that Small Smiles was aware of Medicaid Fraud Investigation or any of the *Qui Tam* Actions but disclosed them to National Union and/or to AIS.

Small Smiles, which is now seeking insurance coverage from National Union for the Underlying Actions, including the Havens Action, is obligated to provide the above-requested information pursuant to the Duty of Cooperation described in Section VII.A of the National Union Policies. National Union has every expectation and hope that Small Smiles will comply with its duty to cooperate and provide the requested information.

RESERVATION OF RIGHTS

As set forth above, National Union is continuing to investigate coverage under each of the Policies and therefore reserves all of its rights under the same, at law and in equity.

Small Smiles Holding Company

June 29, 2010

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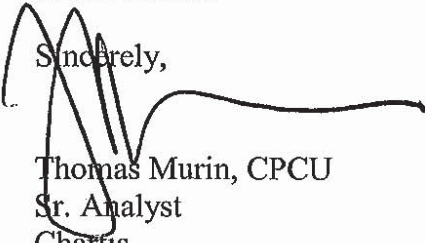
National Union's coverage position is based on the information presently available to us. This letter is not, and should not be construed as, a waiver of any terms, conditions, exclusions or other provisions of any of the Policies, or any other policies of insurance issued by National Union or any of its affiliates. National Union expressly reserves all of its rights under each of the Policies, including the right to assert additional defenses to any claims for coverage, if subsequent information indicates that such action is warranted.

Should you have any additional information that you feel would either cause us to review our position or would assist us in our investigation or determination, we ask that you advise us as soon as possible. Also, if you are served with any additional demands or amended complaints or pleadings, please forward them to us immediately, so that we can review our coverage position. If you wish to have your own personal counsel become involved in this matter, at your own expense, please feel free to do so, and we will cooperate fully with such counsel.

If you have any other insurance policies, which may respond to this claim asserted, you should notify that carrier immediately.

In closing, allow me to reiterate that we value you as a customer and encourage you to contact us should you have any questions or concerns regarding the contents of this letter. Thank you for your cooperation in this matter.

Sincerely,



Thomas Murin, CPCU
Sr. Analyst
Chartis

cc:

Small Smiles of East Albuquerque, P.C.
201 San Pedro Drive, SE, STE B-2
Albuquerque, NM 87108

Chase Dighton
c/o Small Smiles of East Albuquerque, P.C.
201 San Pedro Drive, SE, STE B-2
Albuquerque, NM 87108

Chase Dighton
c/o Small Smiles Holding Company
618 Church Street, Suite 520
Nashville, TN 37219

EXHIBIT 1

Pertinent Provisions of the Policies

Except where specified, the language of the provisions set forth herein is identical in each of the Policies.

DENTISTS LIABILITY

PROFESSIONAL LIABILITY COVERAGE PART

CLAIMS MADE

* * *

Throughout this Policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section **III. WHO IS AN INSURED**.

* * *

I. COVERAGE AGREEMENTS

- A. We will pay on behalf of the insured those sums that the insured becomes legally obligated to pay as "damages" because of a "dental incident", provided that:
1. The "dental incident" occurs on or after the Retroactive Date shown in the Declarations and prior to the end of the "policy period"; and
 2. The "claim" for "damages" is first made against any insured, in writing, during the "policy period" or any Extended Reporting Period we provide under Section VIII. Extended Reporting Period.
- B. We have the right and duty to defend the insured against any "claim" to which this insurance applies, even if the allegations in such "claim" are groundless, false, or fraudulent. However, we have no duty to defend the insured against any "claim" to which this insurance does not apply.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Section **V. SUPPLEMENTARY PAYMENTS**.

* * *

- D. The amount we will pay for "damages" is limited as described in Section **IV. LIMITS OF INSURANCE**. We will not be obligated to defend any "claim" after the Limits of Insurance have been exhausted by the payment of judgments or settlements.

- E. This insurance applies to “damages” arising out of a “dental incident” that occurs anywhere in the world, provided that the “claim” is brought within the United States of America, its territories or possessions, Puerto Rico, or Canada.

II. EXCLUSIONS

This insurance does not apply:

- A. To a “dental incident” which occurred prior to the inception date of this policy if an insured knew or reasonably should have known, that the “dental incident” could result in, or had already resulted in, a “claim”.
- B. To a “dental incident” arising out of any dishonest, fraudulent, criminal, or knowingly wrongful act, error, or omission committed by or at the direction of any insured.

* * *

- I. To a “dental incident” which involves the use of intravenous or intramuscular injections or “general anesthesia”.

This exclusion does not apply:

1. When the intravenous or intramuscular injections or “general anesthesia” are administered by a licensed provider of anesthetic services, or
 2. To the use of intravenous or intramuscular injections to render “conscious sedation” in emergency situations where a life threatening or potential permanent injury exists.⁵
- J. To a “dental incident” which occurs while an insured’s professional license as required by law is suspended, expired, canceled, revoked, or otherwise invalid.
- K. To a “dental incident” arising out of the prescribing or dispensing of any drugs, pharmaceuticals, or controlled substances:
1. By anyone without the appropriate license, registration or certification; or
 2. That are not approved for use in the treatment of human beings by the United States Food and Drug Administration.

* * *

- O. To a “dental incident” expected or intended by any insured or by any person for whose acts, errors or omissions an insured may be held liable.

* * *

⁵ As amended by the General Anesthesia Endorsement contained in each of the Policies.

III. WHO IS AN INSURED

A. If you are shown in the Declarations as:

1. An individual dentist, you and your spouse are insureds, but only with respect to the conduct of your "dental business";
2. A partnership or joint venture, you, your members and your partners and their spouses are insureds, but only with respect to the conduct of your "dental business";
3. A limited liability company, you and your members are insureds, but only with respect to the conduct of your dental business;
4. A "dental corporation" or an organization other than a partnership, joint venture, or limited liability company, you are an insured but only with respect to the conduct of your "dental business". Your executive officers, directors and shareholders are insureds, but only with respect to the conduct of your "dental business".

* * *

No person, "dental corporation" or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

IV. LIMITS OF INSURANCE

A. Subject to **B.** below, and regardless of the number of "claims" made or "suits" brought, the most we will pay for "damages" arising out of any one "dental incident" is the Limit of Insurance stated in the Declarations. This limit shall apply separately:

1. To each individual dentist shown as a Named Insured in the Declarations as stated in Subparagraph **A.1.** of **Section III., WHO IS AN INSURED**; and
2. To all Named Insureds and all additional insureds collectively, other than those subject to paragraph **1.**, above. This limit applies regardless of the number of insureds under the policy.

B. The most we will pay for the sum of all "damages" to which this insurance applies is the Limit of Insurance shown in the Declarations as Aggregate.

* * *

D. Subject to Paragraphs **A.**, **B.**, and **C.** above, all "claims" arising from one "medical incident" or a series of related "medical incidents" to any one person shall be deemed to have occurred at the time of the first "medical incident" regardless of the number of claimants, or the number of insureds against whom such claims are made.

* * *

VI. DEFINITIONS

* * *

- B. "Claim" means a "suit" or demand made by or for the injured person for "damages" to which this insurance applies.

* * *

- D. "Damages" means all the sums that the insured becomes legally obligated to pay. Damages do not include:

1. Administrative, civil or criminal penalties, fines or sanctions;
2. Payment for "professional services", including the waiver, return, withdrawal or reduction of fees paid to the insured or payment by the insured of fees for "professional services" provided by others.⁶

- E. "Dental Business" means operations or activities on premises used by you in the practice of your dental profession. "Dental business" includes operations necessary or incidental to those premises.

- F. "Dental corporation" means a professional service corporation organized under the corporation law of your state for the purpose of performing "professional services".

- G. "Dental incident" means any act, error or omission in the rendering of or failure to render "professional services" by:

1. An insured; or
2. Any person for whose acts, errors or omissions you are held legally liable.

- H. "General anesthesia" includes deep sedation and means a controlled state of depressed consciousness or unconsciousness, accompanied by partial or complete loss of protective reflexes, including inability to independently maintain an airway and respond purposefully to physical stimulation or verbal command, produced by a pharmacologic or non-pharmacologic method, or combination thereof.

- I. "Policy period" means the period starting on the effective date of this policy as shown in the Declarations. This period ends on the earlier of the expiration date shown in the Declarations or on the effective date of cancellation of this policy.

* * *

⁶ As amended by the Tennessee Amendatory Endorsement contained in each of the Policies.

K. "Professional services" means dental services provided to others by a person trained and qualified to perform those services pursuant to a valid and unrestricted dental, dental hygiene, or dental assisting certificate or license. Such services include service as:

1. An officer or member of any committee of the American Dental Association or any of its committees or societies;
2. An officer or member of a formal accreditation, standards review or other professional board or committee related to a professional dental society or a hospital;
3. A consultant, including a consultant to an organization which provides or administers dental service payment plans.
4. An expert witness while giving testimony under oath.
5. The performance of or failure to perform autopsies.

"Professional Services" also include the writing of books, papers and articles on the technical aspects of a professional dentistry practice, if they are published or distributed by a recognized technical or professional publisher.

* * *

M. "Suit" means a civil proceeding in which "damages" to which this insurance applies are alleged. "Suit" includes:

1. An arbitration proceeding in which such "damages" are claimed and to which the insured must submit or does submit with our consent; or
2. Any other alternative dispute resolution proceeding in which such "damages" are claimed and to which the insured submits with our consent.

* * *

VII. CONDITIONS

* * *

C. Other Insurance

1. If other valid and collectible insurance is available to an insured for "damages" we cover under this insurance, then this insurance is excess over any other such insurance. When this insurance is excess over other insurance, we will have no duty to defend against any "suit" if any other insurer has a duty to defend against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the rights of the individual dentist against all those other insurers.

When this insurance is excess over other insurance, we will pay, up to the applicable limits of insurance, the amount of the loss that exceeds the sum of the total amount that all such other insurance would pay for the loss in the absence of this insurance.

If other insurance is also excess, we will share the remaining loss with that other insurance.

2. If all the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first. If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

* * *

F. Representations

By accepting this policy, you agree that the statements and representations made in the application are true and are the basis for acceptance of the risk assumed by us. In the event that any material statement or representation made in the application is untrue, this policy in its entirety will be void at inception.

* * *

SCHEDULE OF NAMED INSURED

This endorsement modifies insurance provided under the following:

DECLARATIONS

Item 1. Of the Declarations is amended to include the following:

SCHEDULE

Named Insured

Retroactive Date

Per schedule on file with agent

Per schedule on file with agent

* * *

ADDITIONAL INSURED ENDORSEMENT⁷

This endorsement modifies insurance provided under the following:

⁷ This endorsement is contained only in the Entities Policy No. DNU3375848.

PROFESSIONAL LIABILITY COVERAGE PART

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

EMPLOYMENT – RELATED PRACTICES LIABILITY COVERAGE FORM

MEDICAL WASTE DEFENSE EXPENSES REIMBURSEMENT COVERAGE PART

ERISA FIDUCIARY LIABILITY COVERAGE PART

The **WHO IS AN INSURED** section is amended to include as an insured the person or entity shown in the Schedule below, but only with respect to their liability arising out of the conduct of your business

Schedule

Per Schedule on File with Agent

* * *

BILLING ERRORS AND OMISSIONS COVERAGE ENDORSEMENT⁸

NOTICE: THE LIMIT OF INSURANCE PROVIDED HEREIN IS IN ADDITION TO THE LIMITS OF INSURANCE FOR ALL OTHER COVERAGE UNDER THIS POLICY. HOWEVER, “BILLING DAMAGES” AND “CLAIM EXPENSES” REDUCE THE LIMITS OF INSURANCE PROVIDED HEREIN.

This Endorsement modifies insurance provided under the following:

DENTISTS PROFESSIONAL LIABILITY COVERAGE PART

I. The following is added to Section **I COVERAGE AGREEMENTS**

- A. We will pay those sums the insured becomes legally obligated to pay as “billing damages” resulting from a “wrongful act” to which this insurance applies. We will have the right and duty to defend the insured against any “billing claim” seeking those “billing damages”. However, we will have no duty to defend the insured against any “billing claim” seeking “billing damages” because of a “wrongful act” to which this insurance does not apply. We may, at our discretion, investigate any incident that may result from a “wrongful act”. We may, with your written consent, settle any “billing claim” that may result. But:

1. The amount we will pay for “billing damages” and “claim expenses” is limited as described in Section **IV – Limit of Insurance**;

⁸ This endorsement is contained only in the Entities Policy No. DNU3375848.

2. The coverage and duty to defend provided by this policy will end when we have used up the applicable limit insurance for "claim expenses" or the payment of judgments or settlements.

* * *

II. The following is added to Section **II. EXCLUSIONS**:

This coverage provided by this endorsement does not apply to any "billing claim":

- A. Relating to a "dental incident".
- B. Arising out of any intentional, dishonest, fraudulent, criminal or malicious act, error or omission, committed by any insured, including the willful or reckless violation of any statute.

* * *

IV. For the purposes of the coverage provided by this endorsement, the following definitions are added to Section **VI. Definitions**.

A. "Billing Claim" means:

1. a demand for money or services, brought by or on behalf of any "government entity" or commercial payor against the insured seeking "billing damages" for a "wrongful act";
2. commencing an audit or investigation of a "wrongful act"; or
3. seeking injunctive relief on account of a "wrongful act".

"Billing Claim" does not include:

1. any customary or routine audit/reconciliation conducted by or at the behest of a "government entity" or commercial payor; or
2. any criminal proceeding against an insured.

* * *

- C. "Billing damages" means any monetary amount not exceeding the limit of liability applicable to this endorsement which the insured is legally obligated to pay as a result of a "billing claim", including sums paid as awards, judgments, settlements and civil fines and penalties imposed by a "government entity".

"Billing damages" does not include the return or restitution of fees, profits, charges or benefit payments to any commercial payor or governmental health benefit payor or program.

“Government entity” means:

1. any department, agency, task force or other organization created by any federal, state or local law, executive order, ordinance or rule; or
2. any department, agency, task force or other organization operated, funded or staffed, in whole or in part, by the federal or any state, county or local government.