

What Every Government Attorney Wanted to Know About Insurance Policy Litigation, But Was Afraid to Ask

Jake Naylor
Naylor & Hales, P.C.

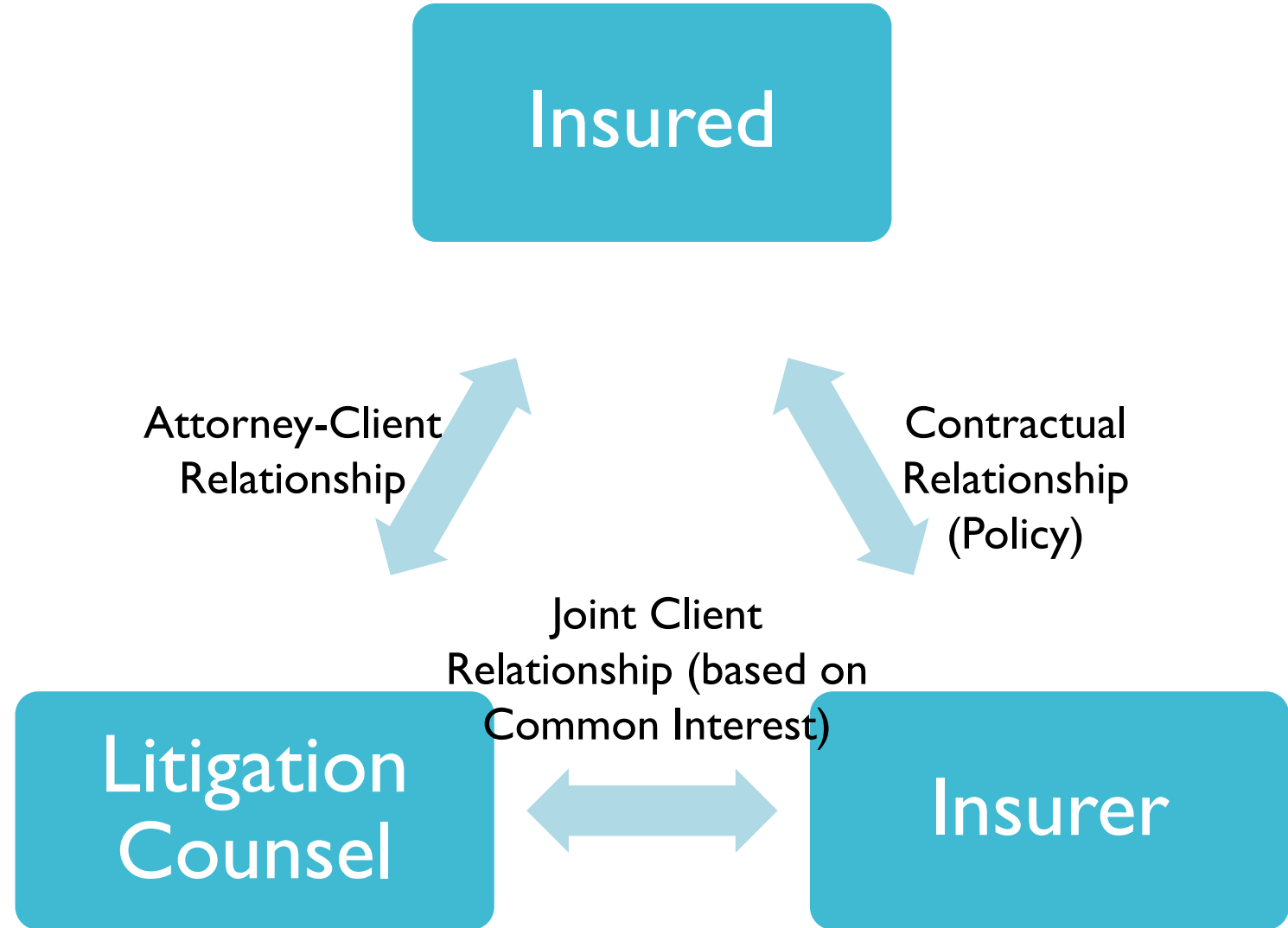
Insurance Litigation Counsel

- Different for Each Attorney
- Chosen and Retained by the Insurer
- Limited Representation of the Insured
- Focused on a Specific Claim

Your Role: “In House Counsel”

- Guide and “Interpreter” for the Govt Entity
 - Client Confidence
- Gatekeeper
 - Where to get Information/Contacts
- Wide Spectrum of Participation with the Litigation Itself
- Trial Phase vs. Appellate Phase

Tripartite Relationship



Know Thy Insurance Policy

- Policy Terms Control
 - Claims, Settlement, Timing, Reporting
- Insured's "Duty to Cooperate"

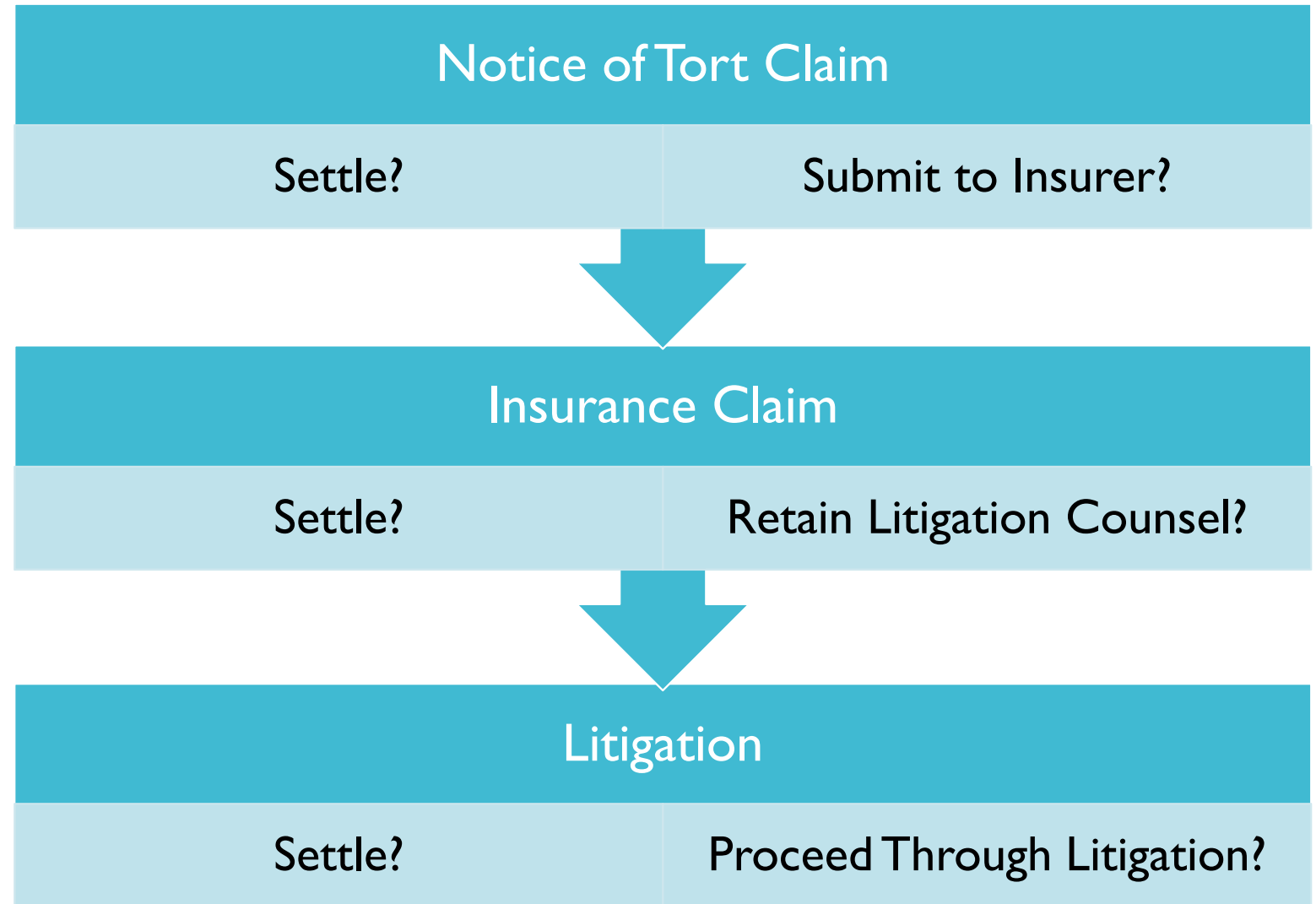
Attorney Client Privilege

- Privilege between Attorney and Insurer?
- Potential Waiver?
 - Common Interest Covers All Parties
 - Via the Insurance Policy and Resulting “Duty to Cooperate”

Navigating Conflicts of Interest

- Coverage Issues are NOT Addressed by Litigation Counsel
- Conduct Not Covered
 - Criminal Conduct
 - Outside the Course and Scope
- Duty to Defend vs. Duty to Indemnify
 - Reservation of Rights
 - Additional/Independent Counsel

Typical Timeline for Litigation



Settlement

- Monetary vs. Non-Monetary Terms
 - Insurance Policy Controls
- Interpreting the Process for Your Clients
 - Informal vs. Formal Settlement Procedures

After We're Gone

- Compliance with Settlement
 - Payment of Wages
 - Liberty Interest Dangers
 - Waiver of Future Employment
- Ongoing Employment?
 - Retaliation
- Additional Issues or Questions that Arise
 - Mostly do not need Litigation Counsel
 - Back to the Policy/Insurer

Questions?