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Department of Administrative Services  
Statewide Business Services  
Hugh M. Farley, Director

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Governor

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Commissioner

September 28, 2001

Wright Banks  
Assistant Attorney General  
Department of Law

Re: Insured: BOR  
Claimant: Theodore Hill  
File # 52 0000108

Wright, this is the file that we discussed yesterday. Defense attorney Phillip Friduss called me yesterday. Apparently the judge ruled from the bench, at the conclusion of the oral arguments, on defendant's motion for summary judgement. Judge Long apparently threw out plaintiff's claim for defamation arising out of the Wall Street Journal article, but left stand the defamation claims arising out of the internal emails written by Wang. However, the judge also apparently ruled that Wang was not in the course and scope of his employment when he wrote the emails. Thus we have the interesting question of whether or not to continue to defend Wang. I am sending to you the amended complaint and also the motion for summary judgement. As you can see, the complaint against Wang is against him individually. While the complaint alludes to Wang's employment at Georgia Tech, neither BOR nor Georgia Tech is a defendant. The Tort Claims Act is not mentioned; an ante litem notice was not filed. In short, this simply appears to be a claim against Wang individually, consistent with the judge's ruling.

We are currently defending this matter under the Tort Claims Policy. However, it may be more appropriate to now look at the Broad Form. In it there is personal injury coverage for libel, slander, defamation, etc. Employees of participating State agencies are covered as insureds. The Insuring Agreement provides personal injury coverage "... in the performance of duties within the scope of an insured's employment..." On page 3 of the Broad Form there is Coverage For Claims Asserted ... Under Any Federal Civil Rights Statue or ADA. That coverage would not appear to apply in this case. Since this suit does not involve the Tort Claims Act (Exclusion A) the Broad Form coverage could apply. The judge has ruled that Wang was not in the course and scope of his employment when he wrote the emails. However, the question now is whether or not Wang was "...in the performance of duties within the scope of an insured's

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employment..." when he wrote the emails; this appears to be a broader interpretation of employment.

We would appreciate your thoughts regarding coverage for Wang. If it were determined that there is no coverage for Wang, what is our next step? Would we simply write and deny further coverage to Wang in accordance with the judge's ruling, or would we go the DJ route? I will send you the judge's Order when received. If there is anything else that you need, please let me know.

Thank you.

David Toensmeier  
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