

California Appellate Court Holds that Theft of Cash Does Not Trigger a Defense or Indemnity for “Loss Of Use” Under a CGL Policy

In *Advanced Network, Inc. v. Peerless Ins. Co.*, 2010 Cal. App. LEXIS 2078 (Dec. 10, 2010) the California Fourth Appellate District concluded that the theft of \$2 million in cash from an insured’s client did not trigger a commercial general liability (CGL) insurer’s duty to defend or indemnify the insured against the client’s lawsuit to recover damages caused by the theft. The Court relied on a long line of cases dating back to *Collin v. American Empire Ins. Co.*, 21 Cal.App.4th 787 (1994) (*Collin*).

The facts are straightforward. An employee of Advanced Network, Inc. (ANI) stole \$2 million in cash from an ANI client. The employee got caught. ANI’s client apparently did not recover the stolen cash. The client’s fidelity bond holder paid the loss, and sued ANI for equitable subrogation, breach of contract and negligence. ANI tendered its defense to Peerless Insurance Company (Peerless), its commercial general liability (CGL) insurer. Peerless denied coverage. ANI settled the lawsuit without Peerless’ assistance, and then sued Peerless for breach of the CGL policy and bad faith. The trial court concluded that Peerless breached its duty to defend and indemnify ANI, and entered judgment in favor of ANI after a jury trial for compensatory damages, punitive damages, *Brandt* attorney’s fees, and costs. Peerless appealed.

The Fourth Appellate District reversed. The Court explained that the theft of cash was not “loss of use” of property within the meaning of the CGL policy form:

'Loss of use' of property is different from 'loss' of property. To take a simple example, assume that an automobile is stolen from its owner. The value of the 'loss of use' of the car is the rental value of a substitute vehicle; the value of the 'loss' of the car is its replacement cost."

Id. at *11 (quoting *Collin*). The insured’s client sued to *replace* the stolen cash—not to recover the *loss of use* of the cash. So, the Court concluded that Peerless had no duty to defend or indemnify the insured against its client’s lawsuit. Along the way, the Court provides a helpful explanation of basic principles of California CGL insurance law.



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