

Another Reason to Hire Counsel: No Duty to Reimburse Insureds for Self-Representation

Insurance Law Update

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California Court of Appeal, Fourth District

In *Richards v. Sequoia Ins. Co.*, 195 Cal.App.4th 431 (April 28, 2011), the California Court of Appeal for the Fourth District held that a policy affording coverage for “expenses incurred” was not obligated to compensate the insureds for their self-representation in the underlying action. Lodge owners Linda and Thomas Richards were sued by the estate of a former patron who had been fatally injured in a single car accident after leaving the lodge’s bar. Upon receipt of the tender, Sequoia Insurance Company advised that the matter had been referred to coverage counsel and that the Richards should retain counsel at their expense to defend the lawsuit pending a coverage determination. Sequoia also agreed to reimburse the insureds for reasonable defense costs from the date of tender, if an obligation was owed. The Richards, who were both licensed attorneys, then retained counsel but performed the majority of the legal work. Shortly thereafter, Sequoia accepted the Richards’ defense, subject to a reservation of rights. Ultimately, Sequoia settled the lawsuit and paid all attorneys’ fees owed to the Richards’ counsel.

The Richards then filed a complaint against Sequoia for breach of contract and bad faith, alleging that they were entitled to compensation for the time they had spent responding to the complaint. The trial court entered summary judgment for Sequoia and the Court of Appeal affirmed. The court held that the Richards had sustained no legally cognizable damages because the policy obligated Sequoia only to compensate the Richards for “expenses incurred,” and not for expenses voluntarily assumed by them. Finding that the term “incur” means “to become legally obligated to pay,” the court held that the Richards’ self-representation was not an expense incurred. Moreover, the court found that there was no evidence that Sequoia consented to compensate the Richards for their efforts and that the policy did not create any reasonable expectation to such compensation.

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