

## **'Sufficient Time' Argument Fails to Stop the Clock on Insurer's Blue Ridge Reservation**

### ***Insurance Law Update***

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By: [Erin Yoshino](#)

### ***California Court of Appeal***

In *American Modern Home Ins. Co. v. Fahmian*, 194 Cal.App.4th 162 (April 8, 2011), the California Court of Appeal, Fourth District, declined to read a "sufficient time" requirement into two prerequisites previously pronounced by the California Supreme Court concerning an insurer's right to reimbursement from its insured for reasonable settlements paid on uncovered claims.

Sohail Fahmian tendered an underlying action to his homeowner's insurance carrier, American Modern, which accepted the defense under a reservation of rights. The claimant's attorney made a policy limits demand to American Modern. American Modern wrote to Fahmian, stating that it intended to accept the demand unless Fahmian either undertook his own defense or waived any potential claims alleging that American Modern improperly failed to settle. Fahmian received American Modern's letter on July 2, 2005, and the policy limits demand expired on July 8, 2005. Because Fahmian did not respond to American Modern before the demand expired, American Modern accepted the demand.

American Modern then filed a declaratory relief action against Fahmian seeking reimbursement of the settlement. Based on the jury's findings, the trial court determined that the underlying action was not covered and that American Modern's reservation of rights was timely. Nonetheless, the court held that American Modern was not entitled to reimbursement because Fahmian did not have "sufficient time" to consider and reply to the notice of intent to settle letter.

The California Court of Appeal reversed, relying on the opinion in *Blue Ridge Ins. Co. v. Jacobsen*, 25 Cal.4th 489 (2001). In that case, the Supreme Court held that an insurer may seek reimbursement for uncovered claims included in a reasonable settlement if it has: (1) made a timely and express reservation of rights, (2) expressly notified the insured of its intent to accept a settlement offer, and (3) expressly informed the insured that it may assume its own defense. The Court of Appeal observed that while *Blue Ridge* requires that the insurer's reservation of rights be both *timely* and *express*, the notice of intent to settle and the offer to allow the insured to assume its own defense must only be *express*. The court declined to hold that the insured must have "sufficient time" to consider and respond to the latter two *Blue Ridge* prerequisites.

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