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What Does That Sign Say? No Coverage for Defective Street Signs

Insurance Law Update

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U.S. District Court for the Western District of Texas

In *Admiral Ins. Co. v. H&W Indus. Services, Inc.,* 2011 WL 318277 (W.D. Tex. February 1, 2011), the U.S. District Court for the Western District of Texas held that a commercial general liability (CGL) insurer had no duty to defend or indemnify a sign manufacturer that produced defective signs, due to the "your product" and "impaired property" exclusions.

H&W Industrial Services entered into a contract with the Texas Department of Transportation (TXDOT) to provide more than 10,000 street signs for the City of El Paso. The signs were to be manufactured in accordance with certain specifications and performance standards, including a guaranteed minimum performance period of seven years. Shortly after installation, the film covering the signs began to shrink and discolor, changing the appearance of the signs and making them a traffic hazard. All of the signs had to be replaced. TXDOT and the City of El Paso sued H&W for breach of contract and breach of express and implied warranties, alleging that the signs failed to meet the contractual performance requirements, and seeking recovery for "labor and materials to remove and replace the defective signs" and "the expense of storage of the replaced street signs and other incidental damages." Admiral, H&W's CGL insurer, declined H&W's tender of defense and indemnity and thereafter brought a declaratory judgment action regarding its duty to defend and indemnify.

The district court entered summary judgment in favor of Admiral. In holding there was no duty to defend, the court applied an eight corners analysis and concluded that the costs associated with repair and replacement of the signs fell squarely within the "your product" exclusion because the only damage or loss of use was to the signs themselves. The court then found that coverage for the cost of storing the signs after removal was precluded by the "impaired property" exclusion because the storage expenses resulted from the loss of use of the signs due to a defect or deficiency in those

signs. The court likewise held that there was no duty to indemnify for "the same reasons that negate the duty to defend," and because there otherwise were no facts establishing coverage.

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