

## California Courts Give Effect to the Intent of the Parties to an Insurance Contract

A recent California Court of Appeals decision served as a reminder of the long-standing rule in California that the mutual intent of the parties will always control the interpretation of potentially conflicting provisions in an insurance contract. In its recent decision in *Gemini Ins. Co. v. Delos Ins. Co.* (Dec. 5, 2012, B239533) \_\_\_ Cal.App.4th \_\_\_ [2012 WL 6050774] [Second Dist., Div. Five], the Court of Appeals was faced with the task of interpreting the inter-insured exclusion (i.e., an exclusion for claims between two insureds) in a liability policy as it applied to an additional insured named in the policy when the additional insured's property has been damaged.

**The Facts:** A restaurant owner, and tenant to the property, negligently caused a fire which caused damage to property of the landlord. The landlord was an additional insured under the policy at issue, which insured him from liability for acts caused by the restaurant. The policy also contained an exclusion for claims asserted between two insureds. After the fire, the landlord sought relief from the restaurant for damage to his property. On a motion for summary judgment by the landlord's insurer, the landlord argued that he was not an insured under the policy, and therefore the inter-insured exclusion did not apply. The trial court granted the motion.

**Disposition:** Affirmed. On appeal, the court addressed the issue as one of contract interpretation. Citing to the long-standing rules of contract interpretation, the court stated:

The rules are well established. In interpreting an insurance policy, we follow the general rules of contract interpretation. We give effect to the mutual intention of the parties, determined, if possible, from the written provisions of the contract. The clear and explicit meaning of those provisions, interpreted in their ordinary and popular sense, controls (*Topanga and Victory Partners v. Toghia* (2002) 103 Cal.App.4th 775, 779-780. '[E]xclusionary clauses are interpreted narrowly, whereas clauses identifying coverage are interpreted broadly.' (*Garvey v. State Farm Fire & Casualty Co.* (1989) 48 Cal.3d 395, 406.

The appellate court found that the inter-insured exclusion did not bar recovery by the landlord for damage to his property, but not because the landlord wasn't an insured under the policy. The court found that the inter-insured exclusion only barred recovery when the landlord (an additional insured) was being charged with liability as a result of the tenant's (the named insured) negligence in causing the fire at the restaurant, and the landlord sought recovery directly from the tenant. That was not the case. The landlord only sought to recover for the damage to his property; no one sought to hold the landlord liable for the fire. Since the intent of the additional insured provision was to protect the landlord from liability (not limit recovery for damage to property), he would not be considered an additional insured for purposes of his recovering for damage to his own property. The court therefore looked past the literal interpretation of the policy to give effect to the parties' intent based on a broad reading of the provision identifying coverage.

The court of appeals further found that instances such as this, where a landlord insists on being added as an additional insured under a tenant's liability policy, are common practice. Thus, clearly, the landlord intended to be added to limit its liability for acts of the tenant, not to limit its recovery for damage to property.