

Contribution Between Insurance Carriers And The Duty To Defend

In [*St. Paul Mercury Insurance v. Mountain West Farm Bureau*](#), 210 Cal. App. 4th 645 (10/25/12), the California Court of Appeal addressed the duty of an insurance carrier to defend a general contractor named as an additional insured under a subcontractor's insurance policy in a construction defect case. [In the construction industry, it is typical for a general contractor ("GC") to require that subcontractors ("Subs") name the GC as an additional insured against any claims arising from the Subs' work.]

In this case, a framing Sub worked on a condominium project in Jackson Hole, Wyoming. After the developer sued the GC, the GC cross-complained against the framing Sub, among others, because many of the defects alleged by the developer involved the framing work. The GC tendered its defense to the framing Sub's insurance carrier, but the carrier refused to defend even though the GC was specifically named an additional insured.

Thereafter the GC and framing Sub both negotiated with the developer, using separate counsel, and the case settled.

The GC's carrier then sued the framing Sub's carrier for equitable contribution. The Court of Appeal held that the carrier for the framing Sub had a separate and independent duty to defend the GC as an additional insured because (a) the settlement agreement did not release the insurance company from further liability, (b) the additional insured endorsement did not include language that demonstrated a limit on actual coverage, and (c) the property damage at issue occurred during the policy period. The carrier's argument that it had met its obligation to the GC as an additional insured by defending the framing Sub, was not sufficient.

As a result, the framing Sub's carrier was required to contribute additional amounts to compensate the GC for settle monies it had expended, and attorneys' fees and costs incurred by the GC and/or its insurer in the GC's defense.

The takeaway from this case is that the failure of a carrier to defend its additional insured in a construction defect matter may result in the carrier's payment of not only a judgment or settlement relative to its primary insurance, but also the monies (settlement funds, attorneys' fees and costs) incurred by its additional insured GC as well.

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