



Weekly Law Resume

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Edited by David Blinn and Mark Hazelwood



WEEKLY LAW RESUME™

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Duty to Defend - Calderon Action

Clarendon Insurance Company v. StarNet Insurance Company
Court of Appeal, Fourth District (July 27, 2010)

The Calderon Act (Civil Code Sections 1375 et seq.) passed in 1995, and requires a common interest development association to give notice to a builder, developer, or general contractor of any construction or design defects before it may file suit for the same. This case considered whether an insurer owes a duty to defend during the Calderon process under the standard CGL policy.

Centex homes was the developer of a residential project in Simi Valley known as Westwood Ranch. In July of 2006, the Westwood Ranch Homeowners' Association served a notice of commencement of legal proceedings under the Calderon Process, which included a list of alleged construction defects at Westwood Ranch.

StarNet Insurance Company provided two years of insurance to one of Centex' subcontractors, Sam Hill & Sons, Inc. The StarNet policy contained the definitions of a suit from the standard insurance form for CGL's since 1988, and defined the word "suit" as "a civil proceeding in which damages because of 'bodily injury,' 'property damage' or 'personal and advertising injury' to which this insurance applies are alleged." "Suit" was also defined as "any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent." Clarendon American Insurance Company issued a policy to another subcontractor, Ebensteiner Company. Centex was afforded coverage as an additional insured under the Clarendon policy issued to Ebensteiner.

In December of 2007, Centex filed a complaint against Clarendon, seeking payment of defense fees and costs incurred in defending against the Calderon Notice. Clarendon cross-complained against the additional insurers, including StarNet, seeking a declaration that they were obligated to provide Centex a defense and/or coverage. Clarendon eventually reached settlements with and dismissed all the other insurers except StarNet.

StarNet moved for summary judgment, asserting that the Calderon Notice and the Calderon Process did not constitute a "suit" within the meaning of its policies. The trial court denied StarNet's motion,

San Francisco Office

505 Montgomery Street, 7th Floor | San Francisco, CA 94111 | Phone: 415-981-6630 | Fax: 415-982-1634

Monterey Office

2 Lower Ragsdale Drive, Suite 120 | Monterey, CA 93940 | Telephone: (831) 655-8822 | Fax: (831) 655-8881

Web: www.lowball.com



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concluding that the process was in fact a "civil proceeding" for purposes of the definition of a "suit" under the policy. It also ruled that the Calderon Process fit the "alternative dispute resolution proceedings" definition of suit. StarNet appealed.

The Court of Appeal upheld the trial court. It noted that the literal meaning of the term "civil proceeding" encompassed the Calderon Process because it was a proceeding created by the Civil Code that was required before an Association may file a complaint alleging construction or design defect damages. Further, the process includes inspections, exchanges of documents and discovery, and any contractor or design professional who is put on notice of the process is prohibited from conducting further testing or inspection once litigation ensues unless good cause is shown to the court. The process is thus part and parcel of construction or design defect litigation and cannot be divorced from a subsequent complaint. Hence, under the StarNet policies, the Calderon Process fit the definition of a "suit" which StarNet's insured could reasonably expect would be defended on its behalf.

Having found that the Calderon Process was a "suit" for purposes of the StarNet insurance policy, the Court did not find it necessary to determine whether alternatively it might also fit the definition of a "suit" as an "an alternative dispute resolution process." The trial court's ruling denying summary judgment for StarNet was upheld.

COMMENT

The Calderon Process fits the standard CGL form definition of a "suit," and if a duty to defend a suit is owed, a duty to defend during the Calderon Process will also be required. The case is worth reading for a clear summary of the Calderon Process and how it is supposed to work.

For a copy of the complete decision see:

[HTTP://WWW.COURTINFO.CA.GOV/OPINIONS/DOCUMENTS/G042353.PDF](http://www.courtinfo.ca.gov/opinions/documents/G042353.pdf)

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