

California Supreme Court Holds That an Adjudicative Administrative Proceeding Is a 'Suit' for Purposes of Liability Coverage

Insurance Law Flash

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The California Supreme Court today issued its long-awaited opinion in *Ameron International Corp. v. Insurance Co. of the State of Pennsylvania*, 2010 WL 4643779 (Nov. 18, 2010), concerning the scope of the term "suit" in commercial general liability policies. The court reaffirmed the validity of *Foster-Gardner, Inc. v. National Union Fire Ins. Co.*, 18 Cal.4th 857, 887 (1998), where it established the "bright-line" rule that a "suit" is "a court proceeding initiated by the filing of a complaint." Nevertheless, the court, in a decision authored by Justice Ming Chin, found that a proceeding before the U.S. Department of Interior Board of Contract Appeals (IBCA) was a "suit" under policies that did not define that term. As the court stated: "This quasi-judicial adjudicative proceeding, employed to resolve government demands against insured parties, is a 'suit' as a reasonable insured would understand that term."

The insured, Ameron, subcontracted for the fabrication and installation of concrete siphons used in the Central Arizona Project aqueduct, a project of the U.S. Department of Interior, Bureau of Reclamation. The Bureau discovered defects in the siphons that necessitated their replacement. The Bureau's contracting officer issued a decision finding Ameron and the general contractor responsible for the defects and seeking almost \$40 million in damages. Ameron challenged the decision before the ICBA. After a 22-day proceeding before an administrative judge, the parties agreed to mediation, and Ameron settled the Bureau's claims for \$10 million. Ameron sued a number of primary and excess insurers to recover the costs of defense and settlement of the claims.

In determining whether the ICBA proceeding was a "suit" under policies that did not define that term, the Supreme Court focused on three main factors: (1) the pleading requirements under the ICBA, which the court found were equivalent to the requirements for a complaint under the California Code of Civil Procedure; (2) the

"due process" available before the ICBA, which was equivalent to a court proceeding, including the ability to subpoena witnesses and cross-examine them under oath, and that evidence was subject to generally accepted federal rules of admissibility; and (3) the power of the ICBA administrative judge award damages, which was the same relief as would be available to a litigant in the Court of Federal Claims. Based on these considerations, the court concluded that "[a] reasonable policyholder would recognize such proceedings as a suit and would expect to be defended and, if necessary, indemnified by its insurer."

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