

Duty Of An Insurer To Defend An Additional Insured

By: Peter S. Bauman, Esq.

<http://commercialcounselor.com/>

Many commercial contracts require the seller to maintain insurance against stated risks and also requires that the purchaser be named an additional insured under the seller's insurance policies. This typically requires that the seller's insurer issue a policy endorsement naming the purchaser as an additional insured.

Being named an additional insured provides protection and gives rise to a duty to defend and indemnify if the purchaser is sued and the claim relates to matters covered under the seller's policy.

But what happens if a lawsuit arises and the seller's insurance company refuses to defend the additional insured or pay any damages suffered by the additional insured? Does the seller's insurance company meet its obligation to an additional insured by defending only the seller and paying amounts the seller is held liable for? Does this satisfy its obligations?

A recent construction defect case found the answer to be no, holding that the insurance company had a separate duty to defend the additional insured, even though it argued that it had participated in the defense of its additional insured by paying into the settlement of the underlying construction defect action on behalf of its insured. [*St. Paul Mercury Insurance Company v. Mountain West Farm Bureau Mutual Insurance Company* (2012) 012 Cal. App. LEXIS 1118]

Important to the decision was the fact that the settlement agreements reserved the right of the general contractor to seek equitable contribution from other insurers. Also, the insurance company was not a party to the settlement agreements. In addition, issues related to the burden of proof played an important role, as well as factors related to the construction industry and the policy language at issue.

But the larger lesson, for insurance companies and parties involved in various industries, is that being named an additional insured has meaning. Any insurer that does not meet its duty to separately defend an additional insured runs the risk of adverse legal action. In the construction case at issue, the insurer was held liable not only for indemnifying the additional insured, but for attorneys fees and costs as well.

Link to original article: <http://commercialcounselor.com/duty-of-an-insurer-to-defend-an-additional-insured/>

For over 35 years small businesses, major corporations, public entities, individuals and insurance companies have depended on Tharpe & Howell, LLP, to deliver pragmatic, innovative, cost-effective civil litigation and transactional solutions. For more information, please contact us at (818) 473-5720 or email your request to cabusinesslawreport@tharpe-howell.com.