



July 29, 2010

Coverage - Self-Insured Retention - Claim

Clarendon America Insurance Company v. North American Capacity Insurance Company
Court of Appeal, Fourth District (July 7, 2010)

The application of a self-insured retention depends on the particular language of the endorsement. This case construed an SIR endorsement in a multiple-claimant scenario.

Eagle Ranch Residential, LLC, doing business as Tanamera Homes and Resort Communities, LLC constructed a residential development. Clarendon America Insurance Company and North American Capacity Insurance Company insured Tanamera under separate and consecutive commercial general liability policies.

NAC contended that it had no duty to defend Tanamera in a construction defect action brought by the owners of 43 Eagle Ranch homes. NAC contended there was a \$25,000 per claim self-insured retention for each home involved in the action completed after November 30, 2002, the effective date of the NAC policy. Eight of the 43 homes in the action were completed after November 30, 2002. Thus, NAC argued it had no duty to defend the Tanamera action unless and until Tanamera expended \$200,000 of its own funds in settlement, judgments or claim expenses.

Clarendon provided a defense and sued NAC for declaratory relief, equitable contribution and partial indemnity. Clarendon maintained that the SIR applied only one time to the action as a whole and not to each of the individual eight homes allegedly covered by the NAC policy. NAC moved for summary judgment, which was granted. Clarendon appealed.

The Court of Appeal reversed. The NAC SIR endorsement stated that the \$25,000 SIR was per claim. The NAC policy did not define the term "claim." The NAC policy distinguished the term "claim" from "suit." It stated the SIR applied to each and every claim made against the insured regardless of how many claims arose from a single occurrence or were combined in a single suit. Thus, the court stated there was a distinction between the two terms, "claim" and "suit."



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However, another portion of the policy dealing with the insurer's obligation to pay fees to independent counsel used the term "claim" as synonymous with the term "suit." Because there was a mixed use of the word "claim," the court concluded that as used in this policy it was ambiguous. The court stated that since the term "claim" was not defined a reasonable insured in Tanamera's position could have understood the term "claim" to be synonymous with the term "suit." The court stated it could not ascertain any reason why the term "claim" should refer to each home involved in the action rather than to the action as a whole. NAC had a burden of showing that the use of the term "claim," was not ambiguous. NAC failed to meet the burden. Thus, its motion had been erroneously granted.

The court stated this ambiguity could be construed against the insurer only if the insured had a objectively reasonable expectation that there would be coverage under the policy consistent with the ambiguity. This depended on extrinsic evidence consistent with the expectations of the insured. NAC presented no evidence concerning the objectively reasonable expectations of its insured. However, the court noted the policy premium was \$404,320 for a \$2 million aggregate liability limit subject to a \$25,000 per claim SIR. The policy potentially covered 450 homes in the project. Taking NAC's argument to its logical conclusion, it would have meant that the insured would have to pay \$11.25 million in SIR payments before it received \$2 million in liability insurance coverage. The court felt that this bolstered its position that NAC had not shown that a reasonable insured in Tanamera's position would have expected the \$25,000 per claim SIR to apply to each individual home involved in the suit.

The judgment was reversed and the matter remanded for further proceedings.

COMMENT

The problem in this case was the failure of the SIR endorsement to define the word "claim" as used in the endorsement. A definition in the endorsement would have eliminated the problem.

For a copy of the complete decision see:

[HTTP://WWW.COURTINFO.CA.GOV/OPINIONS/DOCUMENTS/E048176](http://www.courtinfo.ca.gov/opinions/documents/E048176)

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