

Insurer Did Not Act In Bad Faith Or Breach Contract, Judge Says

OAKLAND, Calif. — A California state judge ruled July 5 that OneBeacon Insurance Co. did not act in bad faith or breach a policy in refusing to defend the wife of the owner of a business sued in connection with environmental contamination (The Chaides Family Trust, et al. v. Commercial Union Insurance Co., et al., No. HG04169563, Calif. Super., Alameda Co.).

(Opinion available.  Document #03-070719-103Z.)

Commercial Union Policy

OneBeacon's predecessor, Commercial Union Insurance Co., issued a policy in 1983 to Rudy Chaides, deceased, and Chaides Corp., which is defunct. In 2005, Alameda County Superior Court Judge Richman ruled that OneBeacon had a duty to defend Chaides Corp. with respect to litigation involving contamination from leaky tanks. Judge Richman denied Kathleen Chaides' motion for summary adjudication as to whether the insurer had a duty to defend her as well. Judge Richman ruled that Kathleen Chaides is not a named insured on the policy but the spouse of Rudy Chaides and that she is only insured to the extent Rudy Chaides was operating a sole proprietorship and she was acting as an officer for R.L. Chaides Construction Co.

At trial, it was determined that the company was not a sole proprietorship and that the underlying suit never claimed that Kathleen Chaides did anything wrong in her capacity as an officer. Judge Stephen Dombrink further noted that the underlying complaint does not allege that she did anything as an employee, director or officer that caused the pollution at issue.

The Chaides Corp. was located on land originally owned by the Chaideses personally and then later transferred to the Chaides Family Trust. Judge Dombrink additionally ruled that Kathleen Chaides was not insured in her capacity as a trustee of the Chaides trust. Neither she as a trustee nor the trust itself was insured under the Commercial Union policy, he said.

Not An Insured

He remarked that the tender letter on behalf of Kathleen Chaides, dated 2002, does not appear to be a demand for the insurer to defend her as an insured under the policy. Rather, it is a tender letter on her behalf as an owner of the real estate asking that she be represented under implied indemnity principles or express indemnity under the lease based on the allegation that the corporation installed leaky tanks on the Chaides real estate and that the owners were brought into the case.

"Because it was a request that OneBeacon indemnify and defend the landowner, this tender cannot support the 'duty to defend' claim in our case, which turns on the law that applies to insureds rather than to indemnitees," Judge Dombrink said.

Thus, OneBeacon had no duty to defend Kathleen Chaides personally or as a trustee in response to the 2002 tender, he ruled. In 2004, a tender letter was sent to OneBeacon with respect to defending Kathleen Chaides. By then, an amended complaint had been filed in the underlying action naming her as a trustee and individually. However, by this time, her counsel were aware of evidence indicating that the fuel tanks were not installed until OneBeacon's policy period was over, he said. The amended complaint did not assert any cause of action against Kathleen Chaides in her capacity as an employee or officer of the corporation.

Accordingly, Judge Dombrink ruled that OneBeacon did not breach its duty to defend Kathleen Chaides or act in bad faith in responding to the tender of defense by her.

Alan L. Martini of Sheuerman, Martini & Tabari in San Jose, Calif., represents the trust and Kathleen Chaides. Sara M. Thorpe of Gordon & Rees in San Francisco is counsel for the insurer. ■