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Newsletters

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The Impact of Crawford v. Weather Shield Manufacturing, Inc. on MGA, Producer and Agency Agreements

MGA, Producer and Agency agreements often require one or both parties to them to indemnify the other. Sometimes these agreements refer to defense costs and other times to defense obligations. This article addresses the statutory duty to defend, under California indemnity law, insurance coverage issues arising from that defense obligation, the practical use and effect of indemnity clauses in these agreements and suggestions for addressing the duty to defend.

Recent Court Rulings — Case Summaries & Conclusions

Accountants: *In Pari* Delicto Defense May Be Asserted by Auditors That Have Acted in Good Faith in Dealing With the Corporation's Agents
Official Committee of Unsecured Creditors of Allegheny Health Education and Research Foundation v. PricewaterhouseCoopers, LLP, 989 A.2d 313 (Pa. 2010), 2010 WL 522830

The Pennsylvania Supreme Court recently analyzed the circumstances under which an auditor may assert the*in pari delicto* defense. *Official Committee of Unsecured Creditors of Allegheny Health Education and Research Foundation v. PricewaterhouseCoopers, LLP,* 989 A.2d 313 (Pa. 2010) (AHERF v. PwC). The decision presents a thorough analysis of the defense as it applies to claims against accountants.

Insurance Agents and Brokers: Insurance Agent's Duty Stops at Submitting Application; No Duty to Actually Obtain Coverage or Notify Clients of Denial of Coverage
Cole v. Wellmark of South Dakota, 776 N.W.2d 240 (S.D. 2009)

The Della Tschetter Insurance Agency (Tschetter) submitted an application for health insurance for Dellas and Margie Cole (Coles) to Wellmark of South Dakota, Inc. (Wellmark). Tschetter told the Coles that Wellmark would probably consider their child's allergies to be a preexisting condition and place a rider (exclusion) on the coverage. The application contained, in bold print, the statement that the policy would not become effective until it was approved and

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the applicants were notified in writing. As the meeting with the Coles concluded, Tschetter advised them they were “all set” and “good to go.”

Architects and Engineers: Accepted Work Doctrine May Not Be a Defense Where Work Does Not Comply With Design Plans or Code
Hollis & Spann, Inc. v. Hopkins, 686 S.E.2d 817 (Ga. 2009), 301 Ga. App. 29 (2009)

A hotel guest sued an independent contractor for bodily injuries sustained in a fall while using a handicap access ramp. Plaintiff alleged that while the ramp design complied with the accessibility requirements of the Americans with Disabilities Act (ADA) and the Georgia Code, the ramp as constructed did not.

Insurance Agents and Brokers: Court Finds No Error in Judge’s Charging of Jury Only on Professional Negligence
Credit Suisse First Boston Mortgage Capital LLC vs. Philip Lehman Company Ltd. 2010 WL 816540 (Unpublished Decision of the Appellate Division of the Superior Court of New Jersey, March 10, 2010)

This opinion addresses the issue of causation relating to an insurance broker's failure to procure an insurance policy that was supposed to name plaintiff as an additional insured. Plaintiff Credit Suisse First Boston Mortgage Capital LLC (Credit Suisse) contacted defendant Philip Lehman Company Ltd. (Broker) to procure property liability and excess liability insurance coverage for a New Orleans hotel, the Crescent on Canal Hotel (Crescent), which was owned by Credit Suisse. Credit Suisse requested that the Crescent be listed on the policy as a named insured and that Credit Suisse be named as additional insured along with its property management company. The Broker contacted National Security Underwriters Inc. (NSU), a specialty insurance wholesaler for hotels and the hospitality industry. NSU underwriters had no direct contact with plaintiff, and acted only on the basis of information provided by the Broker. The Broker completed the application, which failed to note the request that Credit Suisse and/or the management company be named as additional insureds.

Real Estate: Plaintiffs in Fraud and Negligent Misrepresentation Suit Against Real Estate Agent Must Plead Facts With Sufficient Specificity as to Agent’s Knowledge of the Falsity of His Alleged Misrepresentations, Plaintiffs’ Reasonable Reliance on Alleged Representations, and Agent’s Duty to Plaintiffs
Colasacco v. Robert E. Lawrence Real Estate, et al., 890 N.Y.S.2d 114 (2nd Dept. 2009)

Plaintiffs met with defendant Christopher DiCorato (DiCorato), a real estate agent and employee of defendant Robert E. Lawrence Real Estate, to view a vacant parcel of property. During that meeting, DiCorato walked the property with plaintiffs, showed plaintiffs the boundary lines and markers on the property, and gave plaintiffs a property survey.