

Annual Insurance Law Report

Developments in Insurance Case Law 2012

FOCUS: California

A summary prepared by Gordon & Rees LLP of the holdings, alphabetized by topic, of the cases published in 2012 applying California law, as well as select cases from other jurisdictions, which address the rights and duties of the insurance industry.



Arizona | California | Colorado | Connecticut | Florida | Georgia | Illinois
Maryland | Missouri | Nevada | New Jersey | New York | Oregon | Pennsylvania
South Dakota | Texas | Virginia | Washington | Washington, D.C.

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29 U.S.C. § 1132(c)

A civil penalty under 29 U.S.C. § 1132(c) is a penalty which may be excluded from insurance coverage. *Health Net, Inc. v. RLI Ins. Co.*, 206 Cal.App.4th 232 (2012).

Additional Insured

An additional insured provision is designed to protect parties who are not named insureds from exposure to vicarious liability for acts of the named insured. *Gemini Ins. Co. v. Delos Ins. Co.*, 211 Cal.App.4th 719 (2012).

Where an insurer has a duty to defend an additional insured, an insurer does not fulfill its duties to the additional insured by defending and settling the action against its named insured only. *St. Paul Mercury Ins. Co. v. Mountain West Farm Bureau Mutual Ins. Co.*, 210 Cal.App.4th 645 (2012).

Agents and Brokers

Insured is entitled to restitution of broker fees charged for placement of insurance with nonadmitted carriers that did not comply with the disclosure requirements of Insurance Code 1764.1. *M&F Fishing, Inc. v. Sea-Pac Ins. Managers, Inc.*, 202 Cal.App.4th 1509 (2012).

Insurance brokers owe a limited duty to their clients, which is to use reasonable care, diligence, and judgment in procuring the coverage requested by an insured. *Pacific Rim Mech. Contractors, Inc. v. Aon Risk Ins. Services West, Inc.*, 203 Cal.App.4th 1278 (2012).

An insurance broker does not breach its duty to clients to procure the requested insurance policy unless (a) the broker misrepresents the nature, extent, or scope of the coverage being offered or provided, (b) there is a request or inquiry by the insured for a particular type or extent of coverage, or (c) the broker assumes an additional duty by either express agreement or by holding himself out as having expertise in a given field of insurance being sought by the insured. *Pacific Rim Mech. Contractors, Inc. v. Aon Risk Ins. Services West, Inc.*, 203 Cal.App.4th 1278 (2012).

After a policy is issued, an insurance broker has no continuing duty to investigate or monitor the insurer's financial condition or notify the insured of changes in the insurer's post-procurement financial condition. *Pacific Rim Mech. Contractors, Inc. v. Aon Risk Ins. Services West, Inc.*, 203 Cal.App.4th 1278 (2012).

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Appeals: Standard of Review

The interpretation and application of an exclusion in an insurance policy, in the absence of a factual dispute, is an issue of law which the Court of Appeal reviews de novo. *Cardio Diagnostic Imaging, Inc. v. Farmers Ins. Exch.*, 212 Cal.App.4th 69 (2012).

In reviewing a judgment based on a statement of decision following a bench trial, conflicts in the evidence and reasonable inferences to be drawn from the facts are resolved in support affirming of the trial court's decision. *Axis Surplus Ins. Co. v. Reinoso*, 208 Cal.App.4th 181 (2012).

The Court of Appeal does not reweigh the evidence and are bound by the trial court's credibility determinations when reviewing the sufficiency of the evidence to support a judgment after a court trial. *Axis Surplus Ins. Co. v. Reinoso*, 208 Cal.App.4th 181 (2012).

Appellate courts presume that the trial court applied the correct standard where the record is silent. *Axis Surplus Ins. Co. v. Reinoso*, 208 Cal.App.4th 181 (2012).

Appellant's failure to bring an asserted ambiguity of omission in a trial court's Statement of Decision allows the Court of Appeal to infer the trial court made findings that support the judgment. *Axis Surplus Ins. Co. v. Reinoso*, 208 Cal.App.4th 181 (2012).

Assignment

An insured which has been fully defended and indemnified by a co-insurer on the risk has no remaining claim for damages to assign against any nonparticipating insurers. *Am. States Ins. Co. v. Nat'l Fire Ins. Co. of Hartford*, 202 Cal.App.4th 692 (2011).

Assumption of the Duty to Defend

The insurer does not assume the duty to defend simply by moving to intervene if the insurer (1) moved to intervene solely on its own behalf and (2) expressly reserved its right to contest coverage. *DeWitt v. Monterey Ins. Co.*, 204 Cal.App.4th 233 (2012).

Attorneys' Fees

Pursuant to Section 742.061 of the Oregon Revised Code, insureds are entitled to an award of attorneys' fees where settlement is not made within six months and the insured's recovery exceeds the amount of any tender made by the insurer – even if the policy was issued and delivered outside of Oregon. *Morgan v. AMEX Assurance Co.*, 352 ORE 363 (Or. 2012).

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Where an entire cause of action alleges no covered wrongful act under an insurance policy, coverage cannot be bootstrapped based solely on a claim for attorneys' fees. Likewise, if a complaint alleges some covered wrongful facts and some acts which are not covered, the claim for attorneys' fees is covered only the extent it arises out of the covered wrongful acts. *Health Net, Inc. v. RLI Ins. Co.*, 206 Cal.App.4th 232 (2012).

Bankruptcy code 11 U.S.C. § 1109(b)

An insurer has standing to challenge the bankruptcy reorganization of an asbestos debtor. *In re Thorpe Insulation Co.*, 671 F.3d 1011 (9th Cir. 2012).

Non-settling insurers were "parties in interest" under 11 U.S.C. § 1109(b) of the bankruptcy code in that reorganization plan could have a negative financial impact on the insurers, for example by the trustee ordering claim payments from insurers that may be higher than what they would pay absent the reorganization plan. *In re Thorpe Insulation Co.*, 671 F.3d 1011 (9th Cir. 2012).

Brandt Fees

An insureds' failure to produce invoices in support of its *Brandt* fees request did not support terminating sanctions absent a finding of willfulness, fault, or bad faith. *R&R Sails, Inc. v. Ins. Co. of the State of Penn.*, 673 F.3d 1240 (9th Cir. 2012).

A district court did not abuse of discretion in ruling that an insured's failure to produce evidence in support of its *Brandt* fees request violated Rule 26. *R&R Sails, Inc. v. Ins. Co. of the State of Penn.*, 673 F.3d 1240 (9th Cir. 2012).

CACI No. 2334

CACI No. 2334 is not limited to instances where the insurer assumed the duty to defend. *DeWitt v. Monterey Ins. Co.*, 204 Cal.App.4th 233 (2012).

CACI No. 2334 is *not* available where the insured neither established the insurer assumed the duty to defend nor established the insurer owed the insured a duty to indemnify. *DeWitt v. Monterey Ins. Co.*, 204 Cal.App.4th 233 (2012).

California Civil Code Section 3287

Civil Code section 3287 does not authorize prejudgment interest where the amount of damage, as opposed to the determination of liability, depends upon a judicial determination based upon conflicting evidence and is not ascertainable from truthful data supplied by the claimant to his debtor. *St. Paul Mercury Ins. Co. v. Mountain West Farm Bureau Mutual Ins. Co.*, 210 Cal.App.4th 645 (2012).

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The certainty requirement for prejudgment interest under Civil Code section 3287 involves two tests: (1) whether the debtor knows the amount owed; and (2) whether the debtor would be able to compute the damages. Where allocation of responsibility is uncertain in an action for equitable contribution, an award of prejudgment interest is improper. *St. Paul Mercury Ins. Co. v Mountain West Farm Bureau Mutual Ins. Co.*, 210 Cal.App.4th 645 (2012).

California Insurance Code § 758.5

Section 758.5(d)(1), which provides an insurer must “prominently disclose,” in an application for insurance, that the insurance contract applied for recommends an automobile be repaired at a particular facility, is not defined in the statute. The legislature appears to have given insurance companies the right to choose how to make the disclosure conspicuous. *Ortega v. Topa Ins. Co.*, 206 Cal.App.4th 463 (2012).

Section 758.5(d)(2) requires the insurer to pay 100 percent of the repair costs when the insured accepts the insurer’s recommendation to take the vehicle to a specific shop. There is no statutory violation where the insurer employs a two-tier physical damage coverage, paying full costs incurred if the insured goes to a preferred repair facility, but only 80 percent of costs if the insured goes to a non-preferred one. *Ortega v. Topa Ins. Co.*, 206 Cal.App.4th 463 (2012).

Continuous Injury Trigger

Under the continuous injury trigger, the date of discovery of damage or injury is not controlling. It is only the effect – bodily injury or property damage during the policy period, resulting from a sudden accidental event or continuous or repeated exposure to conditions – that triggers a potential for coverage under a liability policy containing standard “occurrence” wording. *St. Paul Mercury Ins. Co. v Mountain West Farm Bureau Mutual Ins. Co.*, 210 Cal.App.4th 645 (2012).

Contractual Liability

The cost of benefits a health insurer has voluntarily contracted to pay cannot be passed to a liability insurance carrier simply because the health insurer may have committed a wrongful act in its failure to pay the benefits. *Health Net, Inc. v. RLI Ins. Co.*, 206 Cal.App.4th 232 (2012).

Covenant Judgment

A covenant judgment involves three features: 1) a stipulated or consent judgment between the plaintiff and the insured; 2) a plaintiff’s covenant not to execute on that judgment against the insured; and 3) an assignment to the plaintiff of the insured’s coverage and bad faith claims against the insurer. *Bird v. Best Pluming Group, LLC*, 287 P.3d 551 (Wash. 2012).

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A covenant judgment does not release the tortfeasor from liability, it is simply an agreement to seek recovery only from a specific asset – the proceeds of the insurance policy and the rights owed by the insurer to the insured. *Bird v. Best Plumbing Group, LLC*, 287 P.3d 551 (Wash. 2012).

Declaratory Relief

An insurer's declaratory relief action raised factual questions pertaining to contractual rights, which are legal in nature, entitling the insured to a jury trial. *Entin v. Super. Ct.*, 208 Cal.App.4th 770 (2012).

An insured had a right to a jury trial in a disability income insurer's action for declaratory judgment that the insured was not totally disabled within the meaning of his policies. *Entin v. Super. Ct.*, 208 Cal.App.4th 770 (2012).

Defense Costs

In the absence of a contractual duty to defend, when defense costs are recoverable only as to covered losses, only those defense costs which were actually related to the defense of covered claims may be reimbursed. *Health Net, Inc. v. RLI Ins. Co.*, 206 Cal.App.4th 232 (2012).

Duty to Cooperate

There is no coverage if a policyholder gives false statements regarding a claim. *Hodjat v. State Farm Mutual Auto. Co.*, 211 Cal.App.4th 1 (2012).

Duty to Defend

The insurer does not assume the duty to defend simply by moving to intervene if the insurer (1) moved to intervene solely on its own behalf and (2) expressly reserved its right to contest coverage. *DeWitt v. Monterey Ins. Co.*, 204 Cal.App.4th 233 (2012).

An insurer's coverage obligation begins whenever the insurer becomes aware of facts giving rise to the potential for coverage, and continues until it has been established that there is no potential for coverage. In order to prevail on an insurer's motion for summary judgment based on the absence of a duty to defend, the insured need only show that the underlying claim may fall within policy coverage; the insurer must prove it cannot. Once the possibility of coverage arises, any doubt as to whether the facts establish or defeat the existence of the defense duty must be resolved in the insured's favor. *Travelers Prop. Cas. Co. v. Charlotte Russe Holding, Inc.*, 207 Cal.App.4th 969 (2012). (Abrogated In Part/Distinguished By 2012 U.S. Dist. LEXIS 171481 (N.D. Cal. Nov. 30, 2012)).

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An insurer's duty to defend is not conditioned on the sufficiency of the underlying pleading's allegations of a cause of action; that is an issue for which the policy entitles the insured to an insurer-funded defense. The fact that the insurer may know of a good defense, even an ironclad one, to the underlying claim does not relieve it of its obligation to defend its insured. *Travelers Prop. Cas. Co. v. Charlotte Russe Holding, Inc.*, 207 Cal.App.4th 969 (2012). (Abrogated In Part/Distinguished By 2012 U.S. Dist. LEXIS 171481 (N.D. Cal. Nov. 30, 2012)).

Where an insurer has a duty to defend an additional insured, an insurer does not fulfill its duties to the additional insured by defending and settling the action against its named insured only. *St. Paul Mercury Ins. Co. v. Mountain West Farm Bureau Mutual Ins. Co.*, 210 Cal.App.4th 645 (2012).

Broad reading of general allegations of water damage and construction defects would implicate the work of every contractor involved in the construction and any complaint alleging defective performance of a construction contract, without more, would implicate the insurer for every entity providing labor or materials to the project. *Oregon Mutual Ins. Co. v. Hartford Fire Ins. Co.*, 285 P.3d 892 (2012).

Insurer has no duty to defend where the complaint's broad allegations do not implicate the insured's operations when coverage exists only for "bodily injury" or "property damage" caused by insured's operations. *Oregon Mutual Ins. Co. v. Hartford Fire Ins. Co.*, 285 P.3d 892 (2012).

Duty to Indemnify

An insurer has a duty to indemnify the insured only for covered claims, and no duty to pay noncovered claims because the insured did not pay premiums for such coverage. *Axis Surplus Ins. Co. v. Reinoso*, 208 Cal.App.4th 181 (2012).

An insurer has a duty to its insured to defend in its entirety a "mixed action" — i.e., an action in which some of the claims are at least potentially covered and the others are not. *Axis Surplus Ins. Co. v. Reinoso*, 208 Cal.App.4th 181 (2012).

Duty to Settle

In the absence of coverage (or the duty to indemnify), the insurer cannot be held liable for bad faith refusal to settle. *DeWitt v. Monterey Ins. Co.*, 204 Cal.App.4th 233 (2012).

Covenant of good faith and fair dealing covers the duty to settle within policy limits when there is substantial likelihood of recovery in excess of those limits. *Du v. Allstate Ins. Co.*, 697 F.3d 753 (9th Cir. 2012).

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Equitable Contribution

A claim for equitable contribution is an action based on equitable principles, not a written instrument, subject to a two-year statute of limitations under Code of Civil Procedure section 339, subdiv. 1, not the four year statute of limitations under Section 337 applicable to actions based on written instruments. *Am. States Ins. Co. v. Nat'l Fire Ins. Co. of Hartford*, 202 Cal.App.4th 692 (2011).

A claim for equitable contribution exists independently of the rights of the insured. *Am. States Ins. Co. v. Nat'l Fire Ins. Co. of Hartford*, 202 Cal.App.4th 692 (2011).

Equitable contribution is available to apportion a loss among several insurers when each of those insurers is required to indemnify or defend the same loss or claim, and one insurer has paid more than its fair share of the loss or defended the action without any participation by the other insurers. *Axis Surplus Ins. Co. v. Glencoe Ins. Ltd.*, 204 Cal.App.4th 1214 (2012).

In an action for equitable contribution by a settling insurer against a nonparticipating insurer, the settling insurer has met its burden of proof when it makes a prima facie showing of potential coverage under the nonparticipating insurer's policy. The burden then shifts to the nonparticipating insurer to prove there is no coverage under its policy. *Axis Surplus Ins. Co. v. Glencoe Ins. Ltd.*, 204 Cal.App.4th 1214 (2012).

In an equitable contribution action, a court is not required to allocate liability evenly between primary insurers where the insurers' respective policies contain substantially similar "other insurance" provisions requiring equal sharing of loss. *Axis Surplus Ins. Co. v. Glencoe Ins. Ltd.*, 204 Cal.App.4th 1214 (2012).

Equitable contribution apportions costs among insurers sharing the same level of liability on the same risk as to the same insured. It is available where one insurer has paid more than its fair share of a loss or has defended its insured without participation by other insurers. *St. Paul Mercury Ins. Co. v. Mountain West Farm Bureau Mutual Ins. Co.*, 210 Cal.App.4th 645 (2012).

A party seeking equitable contribution bears the burden of producing the evidence necessary to calculate its "fair share" of defense and settlement costs. *St. Paul Mercury Ins. Co. v. Mountain West Farm Bureau Mutual Ins. Co.*, 210 Cal.App.4th 645 (2012).

A coinsurer that declined to provide a defense is precluded from challenging the reasonableness of the defense costs or the amount paid to settle a claim in a later equitable contribution action. *St. Paul Mercury Ins. Co. v. Mountain West Farm Bureau Mutual Ins. Co.*, 210 Cal.App.4th 645 (2012).

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Allocation of costs in an equitable contribution claim is within a trial court's broad discretion. Courts should consider the nature of the claim, the relation of the insured to the insurers, the particulars of each policy and any other equitable considerations. *St. Paul Mercury Ins. Co. v. Mountain West Farm Bureau Mutual Ins. Co.*, 210 Cal.App.4th 645 (2012).

Equitable Subrogation

A claim for equitable subrogation is the right to recover from a party *primarily* liable for a loss. *Am. States Ins. Co. v. Nat'l Fire Ins. Co. of Hartford*, 202 Cal.App.4th 692 (2011).

An equitable subrogation claim is purely derivative of the rights of the insured. *Am. States Ins. Co. v. Nat'l Fire Ins. Co. of Hartford*, 202 Cal.App.4th 692 (2011).

An equitable subrogation claim requires pleading: (1) that the insured suffered a loss for which the defendant is liable, either as the wrongdoer or because the defendant is legally responsible to the insured for the loss caused by the wrongdoer; (2) the claimed loss was one which the insurer was not primarily liable; (3) the insurer compensated the insured in whole or in part for the same loss for which the defendant is primarily liable; (4) the insurer made payment not as a volunteer; (5) the insured has an existing assignable cause of action against the defendant which the insured could have asserted for its own benefit had it not been compensated for its loss by the insurer; (6) the insurer suffered damages caused by an act or omission upon which the liability of defendant depends; (7) justice requires the loss be shifted from the insurer to the defendant; and (8) the insurer's damages are liquidated in sum. *Am. States Ins. Co. v. Nat'l Fire Ins. Co. of Hartford*, 202 Cal.App.4th 692 (2011).

In progressive damages cases spanning several policy periods, because each insurer is responsible for the full extent of the insured's liability (up to policy limits), and not just for part of damage that occurred during the policy period, each co-insurer is considered "primarily" liable and thus, would be unable to state a subrogation claim against another co-insurer who may also be "primarily" liable. *Am. States Ins. Co. v. Nat'l Fire Ins. Co. of Hartford*, 202 Cal.App.4th 692 (2011).

ERISA

A review of an administrator's decision for abuse of discretion can be tempered by skepticism if the administrator has a conflict of interest and gives inconsistent reasons for a denial. *Harlick v. Blue Shield of Cal.*, 686 F.3d 699 (9th Cir. 2012).

ERISA plan administrators cannot assert reasons for denial of benefits in litigation that were not relied upon during the administrative process. *Harlick v. Blue Shield of Cal.*, 686 F.3d 699 (9th Cir. 2012).

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An ERISA plan within the scope of the California Medical Health Parity Act must provide coverage of all “medically necessary treatment” for “severe mental illnesses” under the same financial terms as those applied to physical illnesses, even if the Plan itself does not provide coverage. *Harlick v. Blue Shield of Cal.*, 686 F.3d 699 (9th Cir. 2012).

When an employer’s plan covers a significant portion of its employees’ pre-disability income, and it is paid from the employer’s general assets, an employee’s option to “buy-up” insurance to cover the remaining of the additional pre-disability income does not take it out of the payroll practice exemption. *Garner v. Sedgwick Claims Mgmt. Services, Inc.*, 2012 U.S. Dist. LEXIS 129231 (2012).

The Department of Labor regulations specifically state that when payments are made from the employer’s general assets that either equal or represent a significant portion of an employee’s compensation it constitutes a payroll practice. *Garner v. Sedgwick Claims Mgmt. Services, Inc.*, 2012 U.S. Dist. LEXIS 129231 (2012).

It is still a payroll practice when an employee opts to exercise a “buy-up” option at his own expense. *Garner v. Sedgwick Claims Mgmt. Services, Inc.*, 2012 U.S. Dist. LEXIS 129231 (2012).

ERISA: Attorneys’ Fees

A plaintiff who prevails under the ERISA statute is entitled only to recover reasonable attorneys’ fees. *Jones v. Metro. Life Ins. Co.*, 845 F.Supp.2d 1016 (2012).

In ERISA cases, “[a] court in its discretion may award fees and costs to either party, as long as the fee claimant has achieved some degree of success on the merits. *Jones v. Metro. Life Ins. Co.*, 845 F.Supp.2d 1016 (2012).

If a plaintiff has prevailed on some claims but not others, fees are not awarded for time spent litigating claims unrelated to the successful claims, and the trial court “should award only that amount of fees that is reasonable in relation to the results obtained.” *Jones v. Metro. Life Ins. Co.*, 845 F.Supp.2d 1016 (2012).

Procedural victories that do not yield success on the merits do not give rise to attorneys’ fee awards. *Jones v. Metro. Life Ins. Co.*, 845 F.Supp.2d 1016 (2012).

Exclusionary language

Exclusionary language of an insurance policy must be conspicuous, plain, and clear such that a layperson can understand it. *Universal City Studios Credit Union v. CUMIS Ins. Society, Inc.*, 208 Cal.App.4th 730 (2012).

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In determining whether exclusionary language of an insurance policy is conspicuous, plain, and clear, the court looks at the font size and style of the typeface that describes the policy's "coverages" and "exclusions." *Universal City Studios Credit Union v. CUMIS Ins. Society, Inc.*, 208 Cal.App.4th 730 (2012).

Exclusions

Exclusionary clauses are interpreted narrowly, whereas clauses identifying coverage are interpreted broadly. *Gemini Ins. Co. v. Delos Ins. Co.*, 211 Cal.App.4th 719 (2012).

A "residential construction activities" exclusion precludes coverage for liability arising out of residential, but not "mixed use," construction activities. *Admiral Ins. Co. v. Joy Contractors, Inc.*, 19 N.Y.3d 448 (N.Y. 2012).

Implied Covenant of Good Faith and Fair Dealing

Defendant insured may independently negotiate a pretrial settlement if the insurer refuses in bad faith to settle the plaintiff's claims. *Bird v. Best Pluming Group, LLC*, 287 P.3d 551 (Wash. 2012).

If an insurer acts in bad faith by refusing to effect a settlement for a small sum, an insured can recover from the insurer the amount of a judgment rendered against the insured, even if the judgment exceeds contractual policy limits. *Bird v. Best Pluming Group, LLC*, 287 P.3d 551 (Wash. 2012).

Installment Fees

An installment fee that reflects the interest charged for the time value of money for the option of making payments of premium over time is not part of the insurance premium. *In Re Ins. Installment Fee Cases*, 2012 Cal. App. Lexis 1271 (2012).

A fee that is a service charge imposed for payment in full of the stated insurance premium for a one-month policy is part of the insurance premium. *In Re Ins. Installment Fee Cases*, 2012 Cal. App. Lexis 1271 (2012).

When policies do not provide policyholders with the option of paying premiums in installments, but rather require payment in full at the beginning of the policy periods, any agreement and fee charged for payment of the premium over installments is separate and distinct from the policy and policy premium. *In Re Ins. Installment Fee Cases*, 2012 Cal. App. Lexis 1271 (2012).

Insurer did not breach the insurance contract by granting a policyholder the option of paying in monthly installments, subject to an agreement to pay the service fees. *In Re Ins. Installment Fee Cases*, 2012 Cal. App. Lexis 1271 (2012).

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Installment fees that reflect interest charged for the time value of money for the option of making premium payments over time do not need to be stated on the declarations page or elsewhere in the policy under Insurance Code Section 381 and 383.5, or approved by the Insurance Commissioner under Sections 1861.01. *In Re Ins. Installment Fee Cases*, 2012 Cal. App. Lexis 1271 (2012).

Insurance Code Section 1764.1

Insured is entitled to restitution of broker fees charged for placement of insurance with nonadmitted carriers that did not comply with the disclosure requirements of Insurance Code 1764.1. *M&F Fishing, Inc. v. Sea-Pac Ins. Managers, Inc.*, 202 Cal.App.4th 1509 (2012).

When claims are based on violation of Insurance Code section 1764.1, the statute of limitations commences at the time of accepting an application for an insurance policy issued by a nonadmitted insurer. *M&F Fishing, Inc. v. Sea-Pac Ins. Managers, Inc.*, 202 Cal.App.4th 1509 (2012).

Intentional Acts

Intended, deliberate, and anticipated consequences of acts are not included within the policy coverage for the consequences of accidents. Whether injury or damage is expected or intended under an insurance policy is determined by the insured's subjective mental state. The test for expected damage is whether the insured knew or believed its conduct was substantially certain or highly likely to result in the kind of damage that occurred. *Axis Surplus Ins. Co. v. Reinoso*, 208 Cal.App.4th 181 (2012).

Interpleader

Rule 22 allows a party to file a claim for interpleader if there is a possibility of exposure to double or multiple liability. *Lee v. West Coast Life Ins. Co.*, 688 F.3d 1004 (9th Cir. 2012).

The purpose of interpleader is for the stakeholder to protect itself against the problem posed by multiple claimants to a single fund. *Lee v. West Coast Life Ins. Co.*, 688 F.3d 1004 (9th Cir. 2012).

Interpleader generally does not extend to counterclaims that are not claims to the interpleaded funds. *Lee v. West Coast Life Ins. Co.*, 688 F.3d 1004 (9th Cir. 2012).

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Where the stakeholder may be independently liable to one or more claimants, interpleader does not shield the stakeholder from tort liability, nor from liability in excess of the stake. Interpleader developed in equity and is governed by equitable principles. Those who have acted in bad faith to create a controversy over the stake may not claim the protection of interpleader. *Lee v. West Coast Life Ins. Co.*, 688 F.3d 1004 (9th Cir. 2012).

A disinterested stakeholder may not be subjected to liability for its failure to resolve the controversy over entitlement to the stake in one claimant's favor, but a stakeholder whose alleged tort caused the controversy is not absolved by filing an interpleader action. *Lee v. West Coast Life Ins. Co.*, 688 F.3d 1004 (9th Cir. 2012).

Jury Instructions

A party is entitled to correct, non-argumentative instructions on every theory of the case advanced by him which is supported by substantial evidence. *DeWitt v. Monterey Ins. Co.*, 204 Cal.App.4th 233 (2012).

The standard of review for an alleged error in jury instructions depends on the nature of the claimed error. A district court's formulation of the jury instruction is reviewed for abuse of discretion. If, however, the instructions are challenged as a misstatement of the law, they are then reviewed de novo. *Du v. Allstate Ins. Co.*, 697 F.3d 753 (9th Cir. 2012).

Whether there is sufficient evidence to support the giving of a jury instruction is reviewed for abuse of discretion. *Du v. Allstate Ins. Co.*, 697 F.3d 753 (9th Cir. 2012).

A party is entitled to an instruction about his or her theory of the case if it is supported by law and has foundation in the evidence. *Du v. Allstate Ins. Co.*, 697 F.3d 753 (9th Cir. 2012).

Misrepresentation

There is no coverage if a policyholder gives false statements regarding a claim. *Hodjat v. State Farm Mutual Auto. Co.*, 211 Cal.App.4th 1 (2012).

Motor Vehicle Insurance

Collision coverage is generally limited to the cost of restoring the damaged vehicle to its pre-accident condition, not to exceed the car's actual cash value at the time of the loss. *Carson v. Mercury Ins. Co.* 210 Cal.App.4th 409 (2012).

"Pre-loss condition" means the pre-accident safety, mechanical and cosmetic condition of a covered vehicle, not the condition of the car when it left the factory or the showroom. *Carson v. Mercury Ins. Co.* 210 Cal.App.4th 409 (2012).

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When an insurer elects to repair a car to its pre-accident condition, it is not also required to pay for any loss of value to the vehicle. *Carson v. Mercury Ins. Co.* 210 Cal.App.4th 409 (2012).

Under California Insurance Code, section 758.5(b)(3), if an insured agrees to use an auto body shop recommended by the insurer, the insured is not liable for any further costs of repair and the insurer guarantees the repairs. The same is not true when the insured selects the repair shop. *Carson v. Mercury Ins. Co.* 210 Cal.App.4th 409 (2012).

Nonadmitted Insurers

When claims are based on violation of Insurance Code section 1764.1, the statute of limitations commences at the time of accepting an application for an insurance policy issued by a nonadmitted insurer. *M&F Fishing, Inc. v. Sea-Pac Ins. Managers, Inc.*, 202 Cal.App.4th 1509 (2012).

Policy Interpretation

The interpretation, construction, and application of an insurance contract are purely issues of law. *Travelers Prop. Cas. Co. v. Charlotte Russe Holding, Inc.*, 207 Cal.App.4th 969 (2012). (Abrogated In Part/Distinguished By 2012 U.S. Dist. LEXIS 171481 (N.D. Cal. Nov. 30, 2012)).

Interpretation of an insurance policy is governed by the general rules of contract interpretation and in doing so, the court looks first to the language of the policy in order to ascertain its plain meaning or the meaning a layperson would ordinarily attach to it. *Universal City Studios Credit Union v. CUMIS Ins. Society, Inc.*, 208 Cal.App.4th 730 (2012).

The lack of an insurance policy definition does not necessarily create ambiguity. *Carson v. Mercury Ins. Co.* 210 Cal.App.4th 409 (2012).

Judicial interpretation of an insurance policy is controlled solely by the written provisions of the contract, if possible, and the terms of the contract are to be interpreted in their ordinary and popular sense. *Cardio Diagnostic Imaging, Inc. v. Farmers Ins. Exch.*, 212 Cal.App.4th 69 (2012).

An ambiguity in an insurance policy only arises if there is more than one construction in issue which is semantically possible. *Cardio Diagnostic Imaging, Inc. v. Farmers Ins. Exch.*, 212 Cal.App.4th 69 (2012).

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If an insurance policy contains an ambiguity, it should be resolved by interpreting the ambiguous provision in the sense the insurer believed the insured understood the provision at the time. If application of this rule does not resolve the ambiguity, the ambiguous provision is construed against the party who drafted the uncertain provision. *Cardio Diagnostic Imaging, Inc. v. Farmers Ins. Exch.*, 212 Cal.App.4th 69 (2012).

A fundamental principal of insurance policy interpretation is the policy language should be construed to give effect to every term. *Cardio Diagnostic Imaging, Inc. v. Farmers Ins. Exch.*, 212 Cal.App.4th 69 (2012).

The test of admissibility of extrinsic evidence to explain the meaning of a written instrument is whether the offered evidence is relevant to prove a meaning to which the language of the instrument is reasonably susceptible. *Cardio Diagnostic Imaging, Inc. v. Farmers Ins. Exch.*, 212 Cal.App.4th 69 (2012).

“Arising out of” language in an additional insured endorsement does not import any particular standard of causation or theory of liability into an insurance policy. Rather, it broadly links a factual situation with the event creating liability, and connotes only a minimal causal connection or incidental relationship. *St. Paul Mercury Ins. Co. v. Mountain West Farm Bureau Mutual Ins. Co.*, 210 Cal.App.4th 645 (2012).

Where the issue is one of policy interpretation and no extrinsic evidence regarding interpretation was presented at trial, the standard of review on appeal is *de novo*. *Axis Surplus Ins. Co. v. Glencoe Ins. Ltd.*, 204 Cal.App.4th 1214 (2012).

Prejudgment Interest

Civil Code section 3287 does not authorize prejudgment interest where the amount of damage, as opposed to the determination of liability, depends upon a judicial determination based upon conflicting evidence and is not ascertainable from truthful data supplied by the claimant to his debtor. *St. Paul Mercury Ins. Co. v. Mountain West Farm Bureau Mutual Ins. Co.*, 210 Cal.App.4th 645 (2012).

The certainty requirement for prejudgment interest under Civil Code section 3287 involves two tests: (1) whether the debtor knows the amount owed; and (2) whether the debtor would be able to compute the damages. Where allocation of responsibility is uncertain in an action for equitable contribution, an award of prejudgment interest is improper. *St. Paul Mercury Ins. Co. v. Mountain West Farm Bureau Mutual Ins. Co.*, 210 Cal.App.4th 645 (2012).

Premiums

An installment fee that reflects the interest charged for the time value of money for the option of making payments of premium over time is not part of the insurance premium. *In Re Ins. Installment Fee Cases*, 2012 Cal. App. Lexis 1271 (2012).

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A fee that is a service charge imposed for payment in full of the stated insurance premium for a one-month policy is part of the insurance premium. *In Re Ins. Installment Fee Cases*, 2012 Cal. App. Lexis 1271 (2012).

When policies do not provide policyholders with the option of paying premiums in installments, but rather require payment in full at the beginning of the policy periods, any agreement and fee charged for payment of the premium over installments is separate and distinct from the policy and policy premium. *In Re Ins. Installment Fee Cases*, 2012 Cal. App. Lexis 1271 (2012).

Insurer did not breach the insurance contract by granting a policyholder the option of paying in monthly installments, subject to an agreement to pay the service fees. *In Re Ins. Installment Fee Cases*, 2012 Cal. App. Lexis 1271 (2012).

Installment fees that reflect interest charged for the time value of money for the option of making premium payments over time do not need to be stated on the declarations page or elsewhere in the policy under Insurance Code Section 381 and 383.5, or approved by the Insurance Commissioner under Sections 1861.01. *In Re Ins. Installment Fee Cases*, 2012 Cal. App. Lexis 1271 (2012).

An insured is not entitled to restitution of premiums and/or commissions for admitted coverage. An insured is also not entitled to restitution for premiums paid for lawfully-placed nonadmitted coverage. *M&F Fishing, Inc. v. Sea-Pac Ins. Managers, Inc.*, 202 Cal.App.4th 1509 (2012).

Product Disparagement

There can be no potential claim for product disparagement, and thus, no duty to defend where the insured's advertisement does not refer to any competitor's product. *Hartford Cas. Ins. Co. v. Swift Distribution, Inc.*, 210 Cal.App.4th 915 (2012).

There can be no potential claim for product disparagement, and thus, no duty to defend where the insured's advertisement did not suggest that its competitor's technology was behind its own technology. *Hartford Cas. Ins. Co. v. Swift Distribution, Inc.*, 210 Cal.App.4th 915 (2012).

There can be no potential claim for product disparagement, and thus, no duty to defend where the insured's advertisement did not feature photos of a competitor's product with the intent to mislead and confuse consumers and "steer" them into purchasing the insured's product. *Hartford Cas. Ins. Co. v. Swift Distribution, Inc.*, 210 Cal.App.4th 915 (2012).

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In order to trigger personal injury coverage it is not essential that the underlying claims must be expressly phrased in terms of disparagement or trade libel. The underlying claims may trigger a duty to defend if the conduct for which the policies provide coverage is charged by implication, as well as by direct accusation. The question is whether the underlying litigation's allegations amount to claims that the insured published matter derogatory to the plaintiff's title to his property, or its quality, or to his business in general; if so, it disparaged the product. *Travelers Prop. Cas. Co. v. Charlotte Russe Holding, Inc.*, 207 Cal.App.4th 969 (2012). (Abrogated In Part/Distinguished By 2012 U.S. Dist. LEXIS 171481 (N.D. Cal. Nov. 30, 2012)).

An insurer's coverage obligation begins whenever the insurer becomes aware of facts giving rise to the potential for coverage, and continues until it has been established that there is no potential for coverage. In order to prevail on an insurer's motion for summary judgment based on the absence of a duty to defend, the insured need only show that the underlying claim may fall within policy coverage; the insurer must prove it cannot. Once the possibility of coverage arises, any doubt as to whether the facts establish or defeat the existence of the defense duty must be resolved in the insured's favor. *Travelers Prop. Cas. Co. v. Charlotte Russe Holding, Inc.*, 207 Cal.App.4th 969 (2012). (Abrogated In Part/Distinguished By 2012 U.S. Dist. LEXIS 171481 (N.D. Cal. Nov. 30, 2012)).

An insurer's duty to defend is not conditioned on the sufficiency of the underlying pleading's allegations of a cause of action; that is an issue for which the policy entitles the insured to an insurer-funded defense. The fact that the insurer may know of a good defense, even an ironclad one, to the underlying claim does not relieve it of its obligation to defend its insured. *Travelers Prop. Cas. Co. v. Charlotte Russe Holding, Inc.*, 207 Cal.App.4th 969 (2012). (Abrogated In Part/Distinguished By 2012 U.S. Dist. LEXIS 171481 (N.D. Cal. Nov. 30, 2012)).

Where an insurer has a duty to defend an additional insured, an insurer does not fulfill its duties to the additional insured by defending and settling the action against its named insured only. *St. Paul Mercury Ins. Co. v. Mountain West Farm Bureau Mutual Ins. Co.*, 210 Cal.App.4th 645 (2012).

The insurer does not assume the duty to defend simply by moving to intervene if the insurer (1) moved to intervene solely on its own behalf and (2) expressly reserved its right to contest coverage. *DeWitt v. Monterey Ins. Co.*, 204 Cal.App.4th 233 (2012).

Reimbursement

The right of reimbursement runs against the person who benefits from unjust enrichment but only to the extent of the person actually benefits. *Axis Surplus Ins. Co. v. Reinoso*, 208 Cal.App.4th 181 (2012).

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The benefit conferred by settlement is the elimination of liability. In allocating liability for reimbursement of settlement costs courts should consider the benefits conferred to each insured by elimination its respective liability. *Axis Surplus Ins. Co. v. Reinoso*, 208 Cal.App.4th 181 (2012).

In a mixed action, an insurer may not seek reimbursement of defense costs for claims that are potentially covered but may seek reimbursement only of those defense costs that can be allocated solely to claims that are not even potentially covered. When an insurer seeks reimbursement of defense costs in a mixed action, it must prove by a preponderance of the evidence that the defense costs are solely allocable to claims that are not even potentially covered. *Axis Surplus Ins. Co. v. Reinoso*, 208 Cal.App.4th 181 (2012).

Insurers seeking reimbursement of settlement costs bear the burden of showing which costs can be allocated to the defense or indemnity of each particular insured. *Axis Surplus Ins. Co. v. Reinoso*, 208 Cal.App.4th 181 (2012).

An insurer is entitled to reimbursement of reasonable settlement costs only if it can show it (1) made an express reservation of rights; (2) expressly notified the insured of its intention to accept a settlement; and (3) gives the insured the opportunity to assume its defense if it disagrees with the insurer's decision to settle. *Axis Surplus Ins. Co. v. Reinoso*, 208 Cal.App.4th 181 (2012).

Reinsurance

As there is typically no special statute of limitations for reinsurance contracts, the statute of limitations for contracts generally will apply. *Transport Ins. Co. v. TIG Ins. Co.*, 202 Cal.App.4th 984 (2012).

Although it has been said that the relationship between a reinsured and its reinsurer is not technically a fiduciary one, centuries of history have treated both as allies, rather than adversaries. *Transport Ins. Co. v. TIG Ins. Co.*, 202 Cal.App.4th 984 (2012).

The statute of limitations for contracts applies to reinsurance contracts. *Transport Ins. Co. v. TIG Ins. Co.*, 202 Cal.App.4th 984 (2012).

Rescission

Rescission based on unilateral mistake requires a mistake of law rather than of a mistake of fact. *Dowling v. Farmers Ins. Exch.*, 208 Cal.App.4th 685 (2012).

A mistake of law vitiates consent only if (1) all contracting parties shared the same misunderstanding of the law; or (2) one party misunderstood the law, and the other contracting parties were aware of this and failed to rectify it. *Dowling v. Farmers Ins. Exch.*, 208 Cal.App.4th 685 (2012).

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Rescission is appropriate where insured's misrepresentation in an application deprives the insurer of the knowledge of, or the opportunity to evaluate, the risks for which it was asked to provide coverage. *Admiral Ins. Co. v. Joy Contractors, Inc.*, 19 N.Y.3d 448 (N.Y. 2012).

Restitution

An insured is not entitled to restitution of premiums and/or commissions for admitted coverage. An insured is also not entitled to restitution for premiums paid for lawfully-placed nonadmitted coverage. *M&F Fishing, Inc. v. Sea-Pac Ins. Managers, Inc.*, 202 Cal.App.4th 1509 (2012).

Right To Jury Trial

An insurer does not have a constitutional right to a jury trial on the reasonableness of a covenant judgment under Washington law or in a subsequent bad faith action. *Bird v. Best Plumbing Group, LLC*, 287 P.3d 551 (Wash. 2012).

When the gist of a case involves the resolution of factual issues pertaining to a plaintiff's contractual rights, the defendant is entitled to a jury regardless of whether that underlying legal claim remains inchoate. *Entin v. Super. Ct.*, 208 Cal.App.4th 770 (2012).

Whether an insured was totally disabled, under the rule and terms of a disability income policy, is a question of fact for the jury to decide. *Entin v. Super. Ct.*, 208 Cal.App.4th 770 (2012).

An insurer's declaratory relief action raised factual questions pertaining to contractual rights, which are legal in nature, entitling the insured to a jury trial. *Entin v. Super. Ct.*, 208 Cal.App.4th 770 (2012).

An insured had a right to a jury trial in a disability income insurer's action for declaratory judgment that the insured was not totally disabled within the meaning of his policies. *Entin v. Super. Ct.*, 208 Cal.App.4th 770 (2012).

Rule 52(c)

In reviewing a judgment following a dismissal of a claim under Rule 52(c), the court reviews the district court's findings of fact for clear error. *Lee v. West Coast Life Ins. Co.*, 688 F.3d 1004 (9th Cir. 2012).

Under Rule 52(c), the district court is not required to draw any inferences in favor of the non-moving party; rather, the district court may make findings in accordance with its own view of the evidence. *Lee v. West Coast Life Ins. Co.*, 688 F.3d 1004 (9th Cir. 2012).

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Self-Insured Retention

When a nonparticipating insurer's duty to defend is subject to the insured satisfying its SIR, the insured may satisfy its SIR by paying it as part of a settlement as long as the nonparticipating insurer was aware of the settlement. The timing of the insured's payment of the SIR does not eliminate the nonparticipating insurer's obligation to contribute to the settlement. *Axis Surplus Ins. Co. v. Glencoe Ins. Ltd.*, 204 Cal.App.4th 1214 (2012).

A settlement is presumptive evidence that it is only for damages covered under the applicable policy. Payment of an SIR toward settlement shares the presumptive effect; an insurer seeking contribution has no obligation to prove the payment applied only to covered damages. *Axis Surplus Ins. Co. v. Glencoe Ins. Ltd.*, 204 Cal.App.4th 1214 (2012).

Settlement

By settling, parties forgo their right to have liability established by a trier of fact and, therefore, the settlement becomes presumptive evidence of the insured's liability and the amount thereof. *Axis Surplus Ins. Co. v. Glencoe Ins. Ltd.*, 204 Cal.App.4th 1214 (2012).

A settlement is presumptive evidence that it is only for damages covered under the applicable policy. Payment of an SIR toward settlement shares the presumptive effect; an insurer seeking contribution has no obligation to prove the payment applied only to covered damages. *Axis Surplus Ins. Co. v. Glencoe Ins. Ltd.*, 204 Cal.App.4th 1214 (2012).

If the amount of a covenant judgment is determined reasonable by a trial court it becomes a presumptive measure of damages in a later bad faith action against the insurer, which the insurer can rebut by showing the settlement was the product of fraud or collusion. *Bird v. Best Pluming Group, LLC*, 287 P.3d 551 (Wash. 2012).

Under Washington law, there are nine factors the court must consider to determine if a settlement is reasonable: 1) the releasing party's damages; 2) the merits of the releasing party's liability theory; 3) the merits of the released party's defense theory; 4) the released party's relative fault; 5) the risks and expenses of continued litigation; 6) the released party's ability to pay; 7) any evidence of bad faith, collusion or fraud; 8) the extent of the releasing party's investigation and preparation; and 9) the interests of the parties not being released. *Bird v. Best Pluming Group, LLC*, 287 P.3d 551 (Wash. 2012).

The trial court retains broad discretion in determining reasonableness, and the appellate review is under an abuse of discretion standard. *Bird v. Best Pluming Group, LLC*, 287 P.3d 551 (Wash. 2012).

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Standards of Review

Where the issue is one of policy interpretation and no extrinsic evidence regarding interpretation was presented at trial, the standard of review on appeal is *de novo*. *Axis Surplus Ins. Co. v. Glencoe Ins. Ltd.*, 204 Cal.App.4th 1214 (2012).

Statute of Limitations

The statute of limitations for contracts applies to reinsurance contracts. *Transport Ins. Co. v. TIG Ins. Co.*, 202 Cal.App.4th 984 (2012).

Subrogation

The “made-whole rule” is a common law principle that limits an insurer’s reimbursement right in situations where the insured has not recovered his or her entire debt. *Carson v. Mercury Ins. Co.* 210 Cal.App.4th 409 (2012).

Trade Libel

The concept of trade libel encompasses a statement in the form of an opinion, if the statement implies the existence of undisclosed facts that justify the opinion. *Travelers Prop. Cas. Co. v. Charlotte Russe Holding, Inc.*, 207 Cal.App.4th 969 (2012). (Abrogated In Part/Distinguished by 2012 U.S. Dist. LEXIS 171481 (N.D. Cal. Nov. 30, 2012)).

Two-Tier Physical Damage Coverage

Where an insurer employs a practice of providing two-tier physical damage coverage, which entails paying all of the reasonable costs incurred at a preferred repair facility, but only 80 percent of the reasonable costs incurred at an unapproved facility, this practice does not violate Insurance Code § 758.5, so long as the policy discloses the coverage restrictions in a sufficiently conspicuous manner. *Ortega v. Topa Ins. Co.*, 206 Cal.App.4th 463 (2012).

Umbrella Coverage

Excess insurer has sole duty to defend under an umbrella policy’s discrimination coverage where no discrimination coverage is available in primary policies. *Federal Ins. Co. v. Steadfast Ins. Co.*, 209 Cal.App.4th 668 (2012).

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There are differences between excess follow form coverage and umbrella coverage, Umbrella insurance provides coverage for claims that are not covered by the underlying primary insurance, and an umbrella insurer provides primary coverage in those circumstances. Thus, a policy that provides both excess and umbrella insurance provides both excess and primary coverage. *Federal Ins. Co. v. Steadfast Ins. Co.*, 209 Cal.App.4th 668 (2012).

New York Law

A “residential construction activities” exclusion precludes coverage for liability arising out of residential, but not “mixed use,” construction activities. *Admiral Ins. Co. v. Joy Contractors, Inc.*, 19 N.Y.3d 448 (N.Y. 2012).

Rescission is appropriate where insured’s misrepresentation in an application deprives the insurer of the knowledge of, or the opportunity to evaluate, the risks for which it was asked to provide coverage. *Admiral Ins. Co. v. Joy Contractors, Inc.*, 19 N.Y.3d 448 (N.Y. 2012).

Oregon Law

Pursuant to Section 742.061 of the Oregon Revised code, insureds are entitled to an award of attorneys’ fees where settlement is not made within six months and the insured’s recovery exceeds the amount of any tender made by the insurer – even if the policy was issued and delivered outside of Oregon. *Morgan v. AMEX Assurance Co.*, 352 ORE 363 (Or. 2012).

Washington Law

Defendant insured may independently negotiate a pretrial settlement if the insurer refuses in bad faith to settle the plaintiff’s claims. *Bird v. Best Plumbing Group, LLC*, 287 P.3d 551 (Wash. 2012).

If an insurer acts in bad faith by refusing to effect a settlement for a small sum, an insured can recover from the insurer the amount of a judgment rendered against the insured, even if the judgment exceeds contractual policy limits. *Bird v. Best Plumbing Group, LLC*, 287 P.3d 551 (Wash. 2012).

A covenant judgment involves three features: 1) a stipulated or consent judgment between the plaintiff and the insured; 2) a plaintiff’s covenant not to execute on that judgment against the insured; and 3) an assignment to the plaintiff of the insured’s coverage and bad faith claims against the insurer. *Bird v. Best Plumbing Group, LLC*, 287 P.3d 551 (Wash. 2012).

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A covenant judgment does not release the tortfeasor from liability, it is simply an agreement to seek recovery only from a specific asset – the proceeds of the insurance policy and the rights owed by the insurer to the insured. *Bird v. Best Plumbing Group, LLC*, 287 P.3d 551 (Wash. 2012).

If the amount of a covenant judgment is determined reasonable by a trial court it becomes a presumptive measure of damages in a later bad faith action against the insurer, which the insurer can rebut by showing the settlement was the product of fraud or collusion. *Bird v. Best Plumbing Group, LLC*, 287 P.3d 551 (Wash. 2012).

Under Washington law, there are nine factors the court must consider to determine if a settlement is reasonable: 1) the releasing party's damages; 2) the merits of the releasing party's liability theory; 3) the merits of the released party's defense theory; 4) the released party's relative fault; 5) the risks and expenses of continued litigation; 6) the released party's ability to pay; 7) any evidence of bad faith, collusion or fraud; 8) the extent of the releasing party's investigation and preparation; and 9) the interests of the parties not being released. *Bird v. Best Plumbing Group, LLC*, 287 P.3d 551 (Wash. 2012).

Broad reading of general allegations of water damage and construction defects would implicate the work of every contractor involved in the construction and any complaint alleging defective performance of a construction contract, without more, would implicate the insurer for every entity providing labor or materials to the project. *Oregon Mutual Ins. Co. v. Hartford Fire Ins. Co.*, 285 P.3d 892 (Wash. 2012).

Insurer has no duty to defend where the complaint's broad allegations do not implicate the insured's operations when coverage exists only for "bodily injury" or "property damage" caused by insured's operations. *Oregon Mutual Ins. Co. v. Hartford Fire Ins. Co.*, 285 P.3d 892 (Wash. 2012).

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121 SW Morrison Street, #1575
Portland, OR 97204
Phone: (503) 222-1075

PENNSYLVANIA

Philadelphia

One Commerce Square
2005 Market Street, Suite 2900
Philadelphia, PA 19103
Phone: (215) 561-2300

Pittsburgh

707 Grant Street, #3800
Pittsburgh, PA 15219
Phone: (412) 577-7400

SOUTH DAKOTA

Rapid City

725 St. Joseph St., #B4
Rapid City, SD 57702
Phone: (605) 737-0133

TEXAS

Austin

816 Congress Avenue, #1510
Austin, TX 78701
Phone: (512) 391-0197

Dallas

2100 Ross Avenue, #2800
Dallas, TX 75201
Phone: (214) 231-4660

Houston

3D/International Tower
1900 West Loop South, #1000
Houston, TX 77027
Phone: (713) 961-3366

VIRGINIA

Tysons Corner

1600 Tysons Blvd. 8th Floor
Tysons Corner, VA 22102
Phone: (703) 847-1444

WASHINGTON

Seattle

701 Fifth Avenue, #2100
Seattle, WA 98104
Phone: (206) 695-5100

WASHINGTON, D.C.

700 12th Street, NW,
Suite 1050
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