

California Appeals Court Says No Duty to Defend Where Policy Exclusion Applies

Article By:

Alex Purvis

Emily M. Ruzic

Amandeep S. Kahlon

In *Ali Heidari v. Golden Bear Insurance*, a California appeals court recently affirmed a lower court's decision to deny relief under a CGL policy, where the policy excluded from coverage work performed by subcontractors under the contractor's warranty exclusion. Specifically, the appellate court upheld the trial court's determination that the insurer did not have a duty to defend the insured. The case involved construction defect claims brought by a homeowner against a contractor for a residence in Monte Sereno, California.

The warranty exclusion under the policy provided that coverage would not apply to occurrences arising out of operations performed by subcontractors. The initial complaint by the homeowner did not allege or disclose which entities completed the work on the property. When the contractor tendered its defense to its insurer, the insurer denied coverage based, in part, on the warranty exclusion.

After the contractor and homeowner settled, the homeowner (as assignee of the contractor's claim) pursued a declaratory and bad faith action against the insurer. Evidence at trial included the contractor's application for insurance, which indicated that 90% of its work was to be performed by subcontractors and that "all trades are subbed out." The trial court was persuaded by the insurer's representative's testimony that she understood the application to mean that the contractor only provided supervision on the project. The actual work was all performed by subcontractors.

Conversely, the court found the contractor's representative's contrary testimony was not credible. The judge reached this finding based on the representative's demeanor during his testimony and on the knowledge that the contractor had intentionally destroyed its project files after completing the project.

In upholding the trial court's decision, the appellate court noted that the homeowner's initial complaint against the contractor did not establish any potential for coverage, which would trigger a duty to defend. The appellate court also determined that the trial court's findings of fact regarding the application of the warranty exclusion also extinguished any such duty and distinguished

the *Heidari* facts from other California coverage cases.

The *Heidari* case underscores how a more detailed complaint may be useful in the context of securing coverage from an insurer. Had the *Heidari* plaintiff included allegations in the complaint regarding the contractor performing some or all of the work, that might have persuaded the insurer to provide a defense based on the potential for coverage. However, by failing to include such allegations and ultimately having the judge find against it on this factual dispute and the applicability of the warranty exclusion, the plaintiff allowed the insurer to avoid any potential liability.

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