



2015 CLM Annual Conference
Palm Desert

BALANCING THE INTERESTS OF MULTIPLE CARRIERS IN TIME ON THE RISK CASES

Presenters: Issy Bustamante, *Willis*
Rosanne Crowley, *XL Group*
Dawn Krigstin, *Ironshore Insurance Company*
Laurie Sherwood, *Walsworth - WFBM, LLP*

UNDERLYING FACTS OF CLAIM:

Plaintiff claims he developed Acute Myelogenous Leukemia ("AML") as a result of his occupational exposure to toxic chemicals during his employment as an auto body repair man at several auto body repair shops in Los Angeles County, California, from 2005 through 2011. Plaintiff was first diagnosed with AML in August 2012 and did not suspect his AML might be occupationally related until he was diagnosed. Plaintiff filed his personal injury complaint ("Complaint") in February 2013 and served it on the insured in March 2013.

The insured timely tendered the Complaint to its insurance broker which, in turn, timely tendered the insured's defense to the environmental insurance policies issued in 2005 and 2006, the CGL insurance policies issued between 2008 and 2011, and the excess insurance policies issues in 2005, 2006, and between 2008 and 2011.

BACKGROUND ON THE INSURED:

The insured is a designer, manufacturer, packager and distributor of paints, primers, finishes, and specialty chemicals used in the automotive industry.

THE INSURANCE POLICIES

The insured purchased both the CGL and the excess policies from Insurance Company A in 2005 and 2006, Company B in 2008, and Company C in 2009, 2010 and 2011. Neither the insured nor its broker can locate either the primary policy or the excess policy it purchased in 2007.

The CGL policies issued in 2005 and 2006 contained a "deemer" clause. None of the other policies issued by any of the insurance companies contained a "deemer" clause.

The deductibles on the policies issued in 2005 and 2006 were \$100,000.00 for each year. The deductible on the policy issued in 2008 was \$50,000.00. The SIRs on the policies issued in 2009, 2010 and 2011 were \$75,000.00 for each year.

The coverage limits on the environmental policies issued in 2005 and 2006 are \$5,000,000.00 per incident. The coverage limits on the CGL policies issued between 2008 and 2011 are \$2,500,000.00 per incident.

SELECTION OF DEFENSE COUNSEL

Insurance Company B, which has one year of coverage, processed the tender of the insured's defense first and retained Law Firm 1. Insurance Company A, which issued policies in two of the seven years at issue, wants to replace Law Firm 1 with Law Firm 2. However, Law Firm 1 has already entered an appearance, met with the client, propounded and responded to extensive written discovery, and completed the deposition of the one product identification witness in the case (the plaintiff). Insurance Company C, which has three years of coverage, accepted the claim late after extensive coverage analysis and claims it can only use its "in-house" counsel, Law Firm 3, because of certain language in the policies it issued.

RESOLUTION-RELATED ISSUES

After extensive litigation that has cost \$700,000.00 to date in fees and costs, defense counsel has been able to reach a "settlement in principal" whereby plaintiff has agreed to resolve his claim against the insured for \$1,000,000.00. The anticipated fees/costs associated with taking this matter to trial from this point forward are expected to be in excess of \$500,000.00. Liability is clear. Damages are uncertain but could be significant.

Insurance Company B does not want to fund its pro rata share of the proposed settlement even though the other two insurance companies have already agreed to fund their pro rata shares of the proposed settlement. Rather, Insurance Company B is willing to pay only 25% of its pro rata share of the proposed settlement and says it will not pay any more.

CARRIER GUIDELINES/REQUIREMENTS

Insurance Carrier A requires litigation reports every 45 days and is willing to pay for all travel-related expenses.

Insurance Carrier B requires litigation reports be in a specific format but does not want them any more frequently than every 90 days. However, it will not pay for any "local" travel-related expenses.

Insurance Carrier C will defer to the other carriers about the timing and the format of the litigation reports. However, it will not allow defense counsel to "bill" for either local or long-distance travel time.