Insurer Not Obligated to Pay Attorney's Fees for Defending Claims Against Insured that Were Not Subject to Coverage

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In *State Farm v. Mintarsih*, (pdf) (Case No. B202888), the Second Appellate District of the California Court of Appeal found that an insurer is not liable under a policy's supplementary payment provision for an attorney's fee award resulting from claims that were not potentially covered under the policy.

This ruling was in sharp contrast to a previous ruling by the Court of Appeal in *Pritchard v. Liberty Mutual*, 84 Cal. App. 4th 890 (2000) that held that in a suit that the insurer defends, the supplementary payment provision covers attorney's fees "despite the absence of even the possibility of coverage for the causes of action that generated the large cost award." The *Mintarsih* ruling, drafted by the well-regarded Justice Walter Croskey, is a very favorable ruling for insurers.

State Farm's insureds were found to have held their domestic servant a virtual slave, awarding the servant $87,000 in damages on four tort theories – negligence, negligence per se, false imprisonment and fraud. Additionally, $740,000 was awarded for Labor Code violations. State Farm had defended the insureds under a reservation of rights.

While it was uncontested that State Farm was not required to cover the $740,000 in Labor Code violations, there was a question as to whether State Farm was required to pay the attorney's fees that the household servant was entitled to receive under the Labor Code, due to the inclusion of the supplementary payment provision of the insureds' policy, in which State Farm agreed to pay "claim expenses" over and above the limits of liability, including "expenses we incur and costs taxed against an Insured in suits we defend."

The Court recognized that the suit initiated by the domestic servant against the insured was a "mixed claims" case – a case presenting claims where there was a potential for coverage (the tort claims) and claims where there was no potential for coverage (the Labor Code claims).

The Court further explained that when costs, which may include attorney's fees, are awarded to an insured, the insurer is only liable to the extent that the costs relate to a claim where there is a potential for coverage. Therefore, the Court held that because there was no potential for coverage for the Labor Code violations, which was the sole basis for the award of fees, State Farm could not be held liable for those fees awarded as costs against the insured.

In other words, the Court rejected the argument that the policy language required the insurer to pay "costs taxed against an Insured in suits we defend" in a mixed claims case, no matter whether the costs taxed stemmed from a covered or uncovered claim. In this regard, the Court criticized the prior *Pritchard* decision because it did not distinguish between the insurer's

contractual obligation to defend potentially covered claims, and the insurer's implied-in-law duty to defend an entire mixed action involving both covered and uncovered claims.

Not only did the Court find that State Farm was not required to pay the attorney's fees arising from the Labor Code violations, but also found that it was not required to pay the damages arising from the tort causes of actions, citing Insurance Code section 533, which precludes indemnity for damages arising from a willful act. While the negligence torts did not require a finding of "willful conduct," the Court found that because the insured's negligent conduct was so intertwined and related to the insured's intentional misconduct, Insurance Code section 533 should preclude recovery from State Farm.

Overall, a resounding win for State Farm. Likely more importantly – at least for every insurer other than State Farm – this case provides an in-depth analysis of "mixed claims" and the issues regarding coverage of costs in those cases. This opinion is especially significant in that it creates a split among the districts regarding the coverage of fees in mixed claim cases – potentially paving the road to the California Supreme Court. Should this issue rise to the California Supreme Court in the future, hopefully, for insurers' sake, the Court will find the instant case is found to be most persuasive. For now, insurers must cite/rely on *Mintarish* and criticize/distinguish *Pritchard*.