



**Valentine S. Hoy**  
San Diego  
(619) 235-1521  
[vhoy@allenmatkins.com](mailto:vhoy@allenmatkins.com)



**Timothy Hutter**  
San Diego  
(619) 235-1510  
[thutter@allenmatkins.com](mailto:thutter@allenmatkins.com)

**About Allen Matkins**

Allen Matkins Leck Gamble Mallory & Natsis LLP is a California law firm with more than 220 attorneys practicing out of seven offices in Orange County, Los Angeles, Century City, San Diego, Del Mar Heights, San Francisco and Walnut Creek. The firm's broad-based areas of focus include intellectual property, real estate, construction, land use, environmental, corporate, finance, business litigation, tax, bankruptcy and creditors' rights, and labor and employment.

[More...](#)

**FOLLOW US**



**California Court of Appeal Ruling on Insurance Coverage Issue Favors Policyholder: Tender Claims Early And Protect Your Right To A Complete Defense**

This alert applies to companies facing litigation in which there may be insurance coverage.

December 1, 2011

On November 17, insurers were taught another costly lesson on the importance of promptly responding to tendered claims from their insureds. In *Janopaul + Block Cos., LLC v. Superior Court* (St. Paul Fire and Marine Ins. Co.), the California Court of Appeal wrestled with an issue relating to insurance bad faith suits which is familiar to litigators at Allen Matkins.

The Janopaul entities were the owners of the El Cortez Hotel in San Diego, and began a project to restore the historic building, hiring a St. Paul insured to serve as general contractor for the project. Janopaul's contract contained an express indemnity provision stating that the general contractor would indemnify Janopaul for all claims arising from its work. When Janopaul was sued by the El Cortez Owners Association, it tendered its defense to the general contractor, and, eventually, to St. Paul as the general contractor's insurer. In the meantime, Janopaul independent lawyers defended the case. St. Paul waited more than two years to provide Janopaul with a coverage decision, but eventually offered to defend under a reservation of rights. The parties could not, however, agree on the rate that St. Paul would pay for Janopaul's independent lawyers. St. Paul filed a petition to compel arbitration under California Civil Code section 2860(c), a California law that allows insurance companies to limit the rates they must pay for their insureds' independent lawyers. After St. Paul filed its petition to compel arbitration, Janopaul filed a bad faith suit against St. Paul, alleging that St. Paul breached its duty to defend Janopaul by delaying its response for over two years.

In the *Janopaul* opinion, the Court of Appeal rejects St. Paul's petition to submit the matter to arbitration, finding that the trial court must first address the threshold questions of duty to defend, breach, and bad faith raised by Janopaul's lawsuit. The ruling allows Janopaul to pursue recovery of its full cost of defense from St. Paul, without the limitation imposed by section 2860(c). In ruling that this was not a simple fee dispute between and insurer and its insured, the Court reinforced its ruling from *Intergulf Development LLC v. Superior Court* (2010) 183 Cal. App. 4th 16, where it held that an insurer's bad faith failure to respond to a tender could result in the forfeiture of the arbitration right provided by section 2860(c). *Janopaul*

broadens the potential reach of [Intergulf](#), as the insured filed its bad faith suit after the insurer sought the refuge of statutory fee arbitration. *Intergulf's* timeline was reversed, with the insurer filing its petition to compel arbitration in the midst of bad faith litigation.

This case should serve as a reminder that companies with the possibility of insurance coverage should tender their claims early and realize that they are entitled to a response in a timely manner. An untimely response by the insurance company may have serious consequences. As the insured's counsel in the Intergulf matter, Allen Matkins is well-versed in this area and frequently assists its clients as they traverse this complicated field of the law. If you are interested in learning more about the cases mentioned above or have questions, please contact Valentine Hoy or Timothy Hutter.

---

© 2011 Allen Matkins Leck Gamble Mallory & Natsis LLP. All rights reserved. This email is intended for general information purposes only and should not be construed as legal advice or legal opinions on any specific facts or circumstances. This email was sent by: Allen Matkins Leck Gamble Mallory & Natsis LLP, 515 S. Figueroa Street, 7th Floor, Los Angeles, California 90071. To stop receiving this publication, click on the "unsubscribe" button.