

INSURANCE LAW LIABILITY UPDATE

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April 2, 2001

Issue No. 50

California Law

Centennial Insurance Company v. United States Fire Insurance Company
(California Court of Appeal, First Appellate District)
01 C.D.O.S. 2596

by Marsha L. Morrow

A California Court of Appeal has rejected a single, bright-line rule mandating equal apportionment of defense costs among multiple insurers in all cases. Instead, the appropriate allocation of defense costs is addressed to the sound discretion of the trial court, based upon equitable principles. Moreover, where one insurer provided coverage for only five and a half months as compared to 36 months by another insurer, an equal shares method of allocation would be “patently arbitrary and inequitable.”

Under well-established California case law, when a defense obligation is triggered, each insurer on the risk owes a duty to defend the entire action. Many insurers have concluded that this rule compels an “equal shares” apportionment of defense costs where multiple insurers share overlapping defense obligations. In **Centennial v. U.S. Fire**, the equal shares approach has now been rejected as “patently arbitrary and inequitable” where there is a wide disparity in time on the risk.

In **Centennial**, U.S. Fire provided liability coverage to Lincoln Associates for five and a half months; Centennial for three years; and Travelers for one year. When a construction defect case was filed against Lincoln, all three insurers agreed to defend. Ultimately, U.S. Fire and Travelers paid approximately \$611,000 in attorneys fees and costs in Lincoln’s defense, while U.S. Fire paid approximately \$68,000.

After the underlying case was resolved, a disagreement arose between the insurers concerning whether U.S. Fire had contributed sufficiently towards Lincoln’s defense. Centennial and Travelers contended that the defense costs should be allocated among the insurers equally rather than on a time-on-the-risk basis. U.S. Fire, however, contended the defense costs should be allocated based upon time-on-the-risk.

Eventually, Centennial filed a complaint on behalf of itself and Travelers against U.S. Fire, contending the defense costs should be allocated equally. U.S. Fire cross-complained, alleging that defense costs were properly allocated on a time-on-the-risk basis. The issue was presented to the trial court on cross-motions for summary adjudication. After oral argument, the trial court denied Centennial’s motion and granted U.S. Fire’s. The court entered a stipulated judgment apportioning Lincoln’s

defense costs on a time-on-the-risk basis. Centennial then appealed. The appellate court first addressed the standard of review. It rejected Centennial's contention that this is a pure question of law subject to de novo review. It asked that where the trial court grants or denies a motion for summary judgment on the basis of its equitable judicial discretion, the standard of review is abuse of discretion. In choosing the appropriate method of allocating defense costs among multiple liability insurance carriers, each insuring the same insured, a trial court must determine which method of allocation will most equitably distribute the obligation among insurers. This is necessarily a matter of equitable judicial discretion, and is therefore subject to an abuse-of-discretion standard of review.

The appellate court then noted that trial courts have adopted a number of different apportionment methods, depending upon the facts and circumstances of the particular case. These include: (1) apportionment based upon relative time on the risk; (2) apportionment based upon relative policy limits; (3) apportionment based upon time on the risk times policy limit; (4) apportionment based upon amount of premiums paid; (5) apportionment based upon equal shares up to policy limits of the policy with the lowest limit and so forth; and (6) apportionment among each carrier in equal shares. In all cases, the goal is to reach the most equitable result based upon the given facts and circumstances of a particular case.

Under the facts of this particular case, the court held that the time on the risk method was more equitable than the equal shares approach. It noted that, in order to adopt the equal shares method of allocation, the trial court would have had to ignore

relative time on the risk and insurance premiums paid for bearing that risk. Thus, U.S. Fire would have had exactly the same liability for defense costs as Centennial and Travelers even though the latter two insurers had covered Lincoln for 90% of the combined policy period and had also collected premiums for that longer period of coverage. According to the appellate court, "such a result would have been patently arbitrary and inequitable."

The court also rejected Centennial's contention that equal shares is required because each insurer owes a "complete duty to defend" the entire action. The court held that Centennial's argument confuses the rules applicable to equitable contribution among insurers with those pertinent to the relationship between an insurance carrier and its own insured. The insurers' obligations to their insured are governed by contract, whereas the reciprocal rights and obligations among several insurers covering the same risk flow from equitable principles.

Finally, the court noted that in determining the appropriate allocation, trial courts should consider various factors, including policy terms, exclusions and limits; time on the risk; the nature of the claim; the relation of the insured to the several insurers; and the relative amount of premiums paid. Given the fact that allocation issues arise in a wide variety of factual circumstances, the court rejected a single bright-line rule as "the very antithesis" of an equitable approach to allocation.

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