

Don't Delay Notice of Claims to Your Insurer

By Robert B. Jacobs, Attorney at Law

Contractors pay thousands of dollars every year to their insurance company to protect themselves in case of a problem. But often times, contractors don't think much about their insurance after they pay the premium – they just assume that in the event of a problem, they'll be covered.

This isn't always the case. Insurance policies are filled with exclusions, and more often than not, they only cover liability for damage and not for economic loss. What does that mean? If a plaintiff sues a contractor for increased costs due to delay in construction, then often the contractor's policy won't provide coverage for such loss unless such coverage has specifically been purchased. Most commercial general liability policies only provide coverage for damage or injury to persons or property, and won't provide coverage for such things as breach of contract or delay. This means that contractors should be very, very hesitant to dismiss potential claims by thinking that all of them will automatically be covered by insurance.

Something that's also very important, but often overlooked, is that the insurance company is usually entitled to receive prompt notice if a claim is made. When a contractor gets sued, the insurance company wants to have the opportunity to minimize the losses or expense. Sometimes contractors forget to do this, and if the insurance company is damaged because of this, then the company may limit or deny coverage.

Here's an example. Suppose a contractor is served with a summons and complaint, and suppose an opportunity exists to settle the suit for \$1,000 if the settlement is made within a month. But suppose that, for whatever reason, the contractor waits three months before notifying his or her insurance carrier, and suppose that in those additional months the claims has a big change of heart and won't settle for less than \$100,000. If the insurance company can prove that the case could have been settled for less if prompt notice had been given, then the insurance company may deny that coverage exists, and the contractor could be left to fend for themselves.

An example of this situation is found in the recent case of Belz v. Clarendon America Insurance Company 2007 DJDAR 7. In that case, a contractor was sued by an owner who claimed the contractor's work was defective. However, the contractor failed to answer the lawsuit, and the owner obtained a default against the contractor. The owner then sued the contractor's insurance company. However, the insurance company claimed at trial that it had no duty to cover the claim because the contractor never notified it of the claim. As a result, the insurance company had no opportunity to investigate the suit, file an answer, or provide the contractor with a defense. The trial court agreed, and the insurance company was held to have no liability under the insurance policy. However, on appeal, the trial court was reversed and the court of appeal ruled that the insurance company couldn't escape liability unless it could show it was substantially hurt by the lack of notice. This case may help contractors who fail to give their insurance companies

prompt notice of claims, but it's important to remember that the cost of asserting all of your rights can be expensive if an appeal is required. It's far, far better to get the insurance company on your side early instead of having to fight them about coverage. The insurance company in Belz was ultimately found liable on a claim where notice wasn't provided, but it was very expensive to get to that point.

The best policy? Put your insurance companies promptly on notice if you get served with a lawsuit. Prompt notice to insurance companies can avoid lots of expense and headache later on.

The Law Office of Robert B. Jacobs provides legal services in the areas of Construction, Business, and Real Estate Law. The office is located in Pleasanton, California and can be reached at (925) 847-8680. The foregoing article concerns only California law and the law of other States may be different. The article is not a complete discussion of the applicable law, and competent counsel should be consulted concerning any specific situation or issue. © 2007 Robert B. Jacobs. All rights reserved.