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LAMBDIN & CHANEY, LLP CLAIMS GAZETTE

Excellence In All That We Do

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Insurance Company Can Be Served If Insured Not Located

For policies issued after January 1, 2011, C.R.S. 42-7-414 now permits a lawsuit to be served on the tortfeasor's liability insurer in an auto accident case.

Insurance companies are now required to include a provision in a motor vehicle liability policy, advising that if the insured's whereabouts for service cannot be determined through reasonable effort, the insured agrees to designate the insurer as the agent for service, pleadings or other filings in a civil action in any Colorado court.

Service on the insurer under this new statutory change shall be made on its registered agent. Venue is the same as if the defendant-insured is a nonresident.

If service is made on the insurer with an absent insured, the amount of the insurer's liability shall not exceed the policy limits of the coverage and payment under the policy shall not be deemed to be an admission of liability by the alleged tortfeasor-insured.

"Reasonable effort" to locate the insured means service at the last known address, an address obtained from the insurance policy, an address from a driver's license or motor vehicle registration, or any successor address.

Are Reservations Necessary?

The purpose of a reservation of rights letter is to advise that coverage issues may result in a denial of all or part of the claims and/or damages.

It is important to issue them in a timely manner and, in fact, Colorado law provides that "an insurer should raise (or at least reserve) all defenses within a reasonable time after learning of such defenses, or those defense may be waived or the insurer . . .

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Did you know?

For policies issued after January 1, 2011, C.R.S. § 10-4-609 now provides that if neither the tortfeasor nor the liability insurance carrier per 42-7-414 can be served with process, then the tortfeasor will be deemed to be uninsured for purposes of UM coverage.

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. . . may be estopped from raising them." ***U.S. Fid. & Guar. Co. v. Budget-Rent-a-Car Sys., Inc.***, 842 P.2d 208, 210 n.3 (Colo. 1992).

The reservation of rights letter should address all claims under all policies that are known to the insurer and it should be supplemented or amended as new facts are discovered or new claims asserted.

With regard to additional insureds, Colorado Division of Insurance Regulation 5-1-15 requires that "an insurer shall notify any additional insured by endorsement on a general liability policy, whose interests are affected by a liability claim, of the results of the insurer's investigation of such claim and the status of the claim within a reasonable period of time."

However, this regulation shall not apply to claims under a general liability policy upon which a lawsuit has been filed.

It's Official: Poo is Pollution

On March 29, 2012, the Colorado Court of Appeals held that raw sewage is a pollutant excluded from coverage under a policy with an absolute pollution exclusion. ***Figuli v. State Farm Mut. Fire & Cas.***, 2012 WL 1036064. Tenants became ill while living in a rental property and testing revealed the presence of toxic mold and raw sewage as a result of overflow from the toilet. The tenants sued the property owner. State Farm denied coverage under the rental dwelling policy based on an exclusion for "pollutants," which included the term "waste" in its definition.

Noting that sewage is defined as a pollutant by the federal government in the Clean Water Act, the Court of Appeals held overflow from a toilet was a discharge of waste and State Farm properly denied coverage.

Spreading the Love—How to Allocate Defense Costs?

With increasing frequency, policyholders change carriers and obtain layers of coverage from different carriers or otherwise qualify for coverage under other insured's policies. The result is multiple carriers owing a defense to the same insured defendant. The question that often arises among the carriers is how to fund the defense, meaning does each pay an equal share or a pro rata share depending on each carrier's insured risk. For example, it hardly seems fair that an insurer for the subcontractor who painted the fences with $1 million limits who happened to name the .

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24-hour Emergency / Accident Response Team

When a catastrophic claim gets reported, such as an explosion or death or severe injuries, the initial response and investigation may very well determine the exposure and liability facing the insured and ultimately paid by the carrier.

A 24-hour emergency / accident response team allows carriers and companies to start gathering vital information within hours of an accident happening, which is key in assessing exposure as early as possible.

Lambdin & Chaney, LLP stands ready to assist in responding to accident sites, on-site investigation management and control, preserving attorney client privileged information where possible, and coordinating experts, adjusters, photos, and videos.

Please contact us to establish our 24-hour response to your next catastrophic claim.

General Contractor's Waiver of Insurance Requirement

General contractors frequently sue subcontractors for their failure to comply with insurance requirements in the subcontract agreements, such as naming the general contractor as an additional insured or failing to procure insurance to indemnify them from liability. While Colorado has not yet addressed this issue head-on, the 5th Circuit has held that a general contractor waived insurance requirements in a subcontract by allowing the subcontractor to start work without the required insurance, by allowing the subcontractor to complete the work without the required insurance, and by paying the subcontractor in full without the required insurance. ***Bott v. J.F. Shea Co., Inc.***, 388 F.3d 530 (5th Cir. 2004).

The court found waiver despite the subcontract agreement containing a non-waiver provision.

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.developer as an additional insured would owe an equal share to defend the developer as the developer's own liability insurer with $10 million limits. Not surprisingly, Colorado has not directly addressed this issue.

The majority rule is a pro rata apportionment that divides defense obligations based on the indemnity risk each insurer assumed. For example, in a case with four insurers that are required to defend with three insurers having $300,000 limits and the fourth having $100,000 limits, the allocation of the defense costs would be three carriers each paying 30% and the fourth paying 10%.

CNA Cas. v. Seaboard Sur. Co., 176 Cal.App.3d 598 (1986); *see also* ***Am. Simmental v. Coregis Ins.***, 107 F.Supp.2d 1064 (D. Neb. 200); ***Sacharko v. Ctr. Equities***, 479 A.2d 1219 (Conn. App. 1984).

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