

Legal Scope

A Construction Law Newsletter by Bright Law Firm, PLLC

Advertising Material

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Insurance Coverage Disputes

All contractor/subcontractors know that insurance is necessary and important. Nearly all projects require specific insurance coverage and a certificate of insurance prior to commencing work on site. Construction companies also appreciate that incidents can occur and, without insurance, the company is exposed to a significant amount of out-of-pocket risk.

Construction companies are less knowledgeable, however, about the process and legal rights when a coverage dispute arises. Let's examine that in further detail.

When the incident or loss occurs on a project, the contractor/subcontractor should immediately notify its insurer of the event. Sometimes the point of contact is an insurance agent or broker. Under all circumstances, the contractor/subcontractor must ensure that the insurer has been notified of the event.

After receiving notice of the incident, the insurance company will usually act to investigate the incident. To cover the loss, the insurance company needs to know the facts. At this point, the insurer often sends a "Reservation of Rights Letter."

These Reservation of Rights Letters set forth various details regarding (a) coverage and (b) limitations on coverage.

Just because a Reservation of Rights Letter was sent does not mean that the insurer is laying the foundation to deny coverage. But that can happen. Sometimes an insurer will immediately respond to an incident by denying coverage due to either an exclusion or perhaps the policy does not cover the incident.

Other times, however, the insurer sends the Reservation of Rights Letter and still continues with its investigation and defense of the claim. If the loss is significant, it is possible that a lawsuit will be filed—often by the injured party. In those instances, the insurer may continue to defend the contractor/subcontractor's interests in the litigation, with an insurance appointed counsel, but know that the Reservation of Rights Letter might still be in effect.

Some contractors/subcontractors think that if the insurance company has entered a defense on the litigation docket, then the issue of coverage is concluded. But that is not always the case. Insurers have the right to file a Declaratory Judgment Action ("DJA"). Usually these are separate lawsuits filed by the insurer against the insured. The insurer is seeking a separate adjudication by a judge regarding whether insurance coverage is required.

To put it bluntly: The DJA is an attempt by the insurer to back-out of coverage. If the insurer files a DJA, it is often filed in Federal Court. At that point, the contractor/subcontractor (insured) is still being sued in one court, arising from the incident, and the contractor/subcontractor is now being sued by its own insurance carrier in a separate court. Obviously, at this point, the contractor/subcontractor should consult its own private counsel to perhaps litigate against the insurer.

When an incident occurs on a construction site, the contractor/subcontractor must be prepared to handle the fallout. It should notify its insurer of the event, and it should also contact its private counsel to prepare for any potential coverage issues or aspects that are not covered by insurance. It is also wise to consult with your insurance agent/broker on an annual basis to ensure that proper endorsements and coverages are in place prior to the incident occurring.

The Numbers:

1.5% to 1.75%

- At the end of March 2018, the Fed raised the interest rate to 1.5% to 1.75%.
- When the Fed raises rates, it does it as a benchmark interest rate range.
- Rates were raised based on the Fed's continued optimism of growth and low unemployment.

Source(s): Jim Tankersley, Fed Raises Interest Rates for Sixth Time Since Financial Crisis, NY Times (Mar. 21, 2018).



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Legal Scope is written by Jeffrey Bright, an attorney licensed in Pennsylvania and Maryland. For more information, contact Bright Law Firm. This newsletter is not legal advice. Unlike this newsletter, legal advice is specifically tailored to the facts, law and objectives unique to each circumstance. **To join or remove yourself from this subscription list, email jbright@bright-lawfirm.com.**