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Zurich's Bid For Quick Win Backfires In Defect Coverage Row

By **Greg Ryan**

Law360, New York (January 31, 2012, 1:30 PM ET) -- Zurich American Insurance Co. lost its bid for summary judgment Monday on a claim regarding Claremont Liability Insurance Co.'s duty to defend a glass company in construction defect litigation, with a California federal judge ruling Claremont had no such duty.

U.S. District Judge Irma E. Gonzalez denied Zurich summary judgment on one of its 44 claims over 12 separate underlying actions in California state court. Zurich is seeking a declaration that Claremont must cough up funds to defend and indemnify San Diego Mirror & Window in the suits.

The motion for partial summary judgment targeted Claremont's alleged duty to defend SDM&W in a particular suit in San Diego court. The dispute centered on whether Claremont's policy for "San Diego Mirror & Window; dba: Certified Installation Inc." covered J&B Manufacturing Corp., which does business as San Diego Mirror & Window. According to a key document in the case, there is common ownership between the companies.

Zurich argued the semicolon between the SDM&W and Certified indicated SDM&W fell under the policy. It also pointed to two exclusions that allude to entities besides Certified, saying such allusions would not be necessary if the policy truly covered only Certified.

Claremont, meanwhile, contended that underwriting documents showed it meant to obtain coverage for Certified separate from that for SDM&W.

Judge Gonzalez ruled that, while the policy is ambiguous on its face, the extrinsic evidence favors Claremont. A report by an inspection service stated the policy was taken out exclusively for work by Certified, and an audit by another insurer stated the two were separate entities, Judge Gonzalez said.

"Because there was no intent to provide coverage to J&B Manufacturing dba San Diego Mirror & Window, there is no potential for coverage under the Claremont policy and thus no duty to defend," the judge said.

An attorney for Claremont, Les W. Robertson of Robertson & Associates APC, said that while the ruling provided a psychological boost to his client, he did not necessarily expect Zurich to fold on the other 11 underlying suits.

"We'll pass it on to the client and see how they want to move forward," Robertson said.

An attorney for Zurich was not immediately available for comment.

The underlying suits seek damages for SDM&W's allegedly shoddy installation of windows, mirrors, doors and shower doors in single-family homes in various California developments.

Zurich claims that SDM&W timely tendered its defense and indemnification for the suits to both Zurich and Claremont. While Zurich accepted the tender and agreed to defend and indemnify the company under its policies, Claremont wrongly refused coverage, according to the insurer.

Zurich is represented by Christine Fierro and Ramiro Morales of the Law Offices of Morales Fierro & Reeves.

Claremont is represented by Les W. Robertson and Catherine C.Y. Tong of Robertson & Associates APC.

The case is Zurich American Insurance Co. v. Claremont Liability Insurance Co., case number 3:10-cv-02232, in the U.S. District Court for the Southern District of California.

--Additional reporting by Abigail Rubenstein. Editing by Cara Salvatore.

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