

Great American Insurance Company, et al. v. Glen Hamel

Year: 2017

Court: Texas Supreme Court

Case Number: 14-1007

An insurer's most basic duty under a commercial general liability insurance policy is to defend and indemnify covered claims. In the case where an insurer wrongfully denies coverage, a policyholder must often resolve the claim itself, and then seek contribution from the insurer after-the-fact. An insurer may not then contest coverage on the grounds that it did not get the opportunity to control the litigation. Certainly, a breaching insurer should not subsequently get two bites at the apple, that is, a new trial to present more evidence to avoid coverage. An insurer instead must defend from the beginning, under a reservation of rights or seek a declaratory judgment that it owes no coverage. Further UP argued that a financial incentive test, as adopted by the Court here, which requires a significant financial stake in order for the proceeding to be adversarial, disadvantages policyholders who lack financial assets. When the policyholder then attempts to seek coverage from the insurer, under the Court's new financial incentive test, it may now face an inquiry into whether it had sufficient assets to constitute a stake in the outcome of the underlying case, dragging the policyholder through even more needless litigation.

UP's letter brief was authored by Tracy Alan Saxe, Esq., Gregory D. Podolak, Esq., and Bethany L. Barrese, Esq. of Saxe Doernberger and Vita, P.C.