Hartford v. Swift

Year: 2013
Court: California Supreme Court
Case Number: S207172

UP urged the California Supreme Court to follow the clear precedent that an insurer's "duty to defend" extends to both direct and indirect, express and implied, disparagement claims. UP urged the Court to overturn a holding by the Court of Appeal that was inconsistent with that precedent. UP reminded the Court that a liability insurer's duty to defend is broader than its duty to indemnify, and includes potential as well as actual claims. An insurer is not relieved of such duty until it has negated all facts suggesting potential coverage. Such facts may be included in the third-party complaint or contained in any extrinsic sources otherwise available to the insurer. Further, UP argued that contract terms must reflect the true intention of the parties and any ambiguous terms shall be resolved in favor of the insured. The policy at issue in this case covered, inter alia, "actionable disparagement claims," which include both express and implied disparagements. California law requires that the policy provisions as a whole and the insurer's exceptions to liability be construed so as to give the insured the protection which he reasonably had a right to expect.

UP's brief was drafted pro bono by Kirk A. Pasich and Kimberly A. Umanoff of Dickstein Shapiro, LLP, and Amy Bach, Esq.

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