

[In Re Solera Insurance Coverage Appeals](#)

Year: 2020

Court: Supreme Court of the State of Delaware

Case Number: N18C-08-315 AML CCLD

In its brief, UP argues that a liability insurer cannot deny coverage for a policyholder's defense costs solely because the policyholder did not seek the insurer's consent to incur those costs in advance when the delay did not have any prejudicial impact on the insurer. First, it is argued that Solera complied with the consent clause, and that the wording of the applicable primary policy did not require "prior" consent. Policies that require insurers consent before the policyholder may incur defense costs must expressly specify as much. Moreover, exclusionary clauses must be accorded strict and narrow construction. Therefore, the court should not read a prior consent clause into the policy. Since insurers have no reasonable grounds for denying consent, Solera complied and should not be denied defense costs. Next, it is argued that in the alternative, if the consent clause were to be read as referring to prior consent, under Delaware law, the insurers must suffer prejudice for the consent clause to foreclose coverage defense costs. UP argues that Delaware law requires prejudice for assertion of notice and consent defenses, and that the Delaware prejudice requirement applies here. Finally, it is argued that if the consent clause were to be read as referring to prior consent, then the policy's express material prejudice requirement would be the only basis for denying coverage of defense costs.

This brief was drafted and submitted pro bono by Benjamin Chapple and Stephanie Chadick of Reed Smith LLP & Bert Wells, Russell M. Squire, and Sara Dennis of Covington & Burling LLP