

K2 Investment Group et al. v. American Guarantee and Liability Insurance Company

Year: 2013

Court: New York Court of Appeals

Case Number: APL-2012-00055/117902/09

UP argued that an insurer’s “duty to defend” is its most basic responsibility under the insurance contract and a failure to do is tantamount to a material breach of contract. As such, the imposition of the Lang rule, which requires insurers in the state of New York to seek a declaratory judgment when it disclaims under a policy, was fully justified. In its brief, UP urged the Court of Appeals to affirm the lower courts’ holdings that American Guarantee wrongfully disclaimed by failing to seek a declaratory judgment under Lang and should be required to pay the judgment entered against K2. UP also argued that many states endorse the view that insurers bear the risk associated with wrongfully disclaiming coverage. Courts in Illinois, North Carolina, Connecticut, Montana, Wisconsin, Mississippi, Alaska, Kentucky, Michigan, Kansas, Louisiana, and Hawaii follow the reasoning of Lang – insurers should be accountable for the insured’s damages. UP further argued that limiting the insured’s damages to full performance of the contract (i.e. payment of what is already owed under the policy), as suggested by American Guarantee, would incentive further wrongful conduct by insurers.

UP’s brief was drafted pro bono by William G. Passannate and Allen R. Wolf of Anderson Kill, P.C. and Amy Bach, Esq.