Padilla Construction Company, Inc., v. Transportation Insurance Company

Year: 2006
Court: California Court of Appeal, 4th District, Division 3
Case Number: G036451

Request for modification of previous decision. The CGL policies at issue potentially cover all damages because of the property damage alleged in the Padilla lawsuit, including property damage that may have occurred prior to inception of the Stage 4 Primary Insurer's policies. Therefore, the Padilla lawsuit was not a "mixed action." That means that Stage 4 Primary Insurer's duty to defend the entire lawsuit was a contractual duty rather than the prophylactic duty discussed in Buss and the Stage 4 Primary Insurer would not be entitled to seek reimbursement of defense costs related solely to damages because of property damage that occurred outside of the Stage 4 Primary Insurer's policy period. Thus, the portions of the Court's Opinion that discuss the defense obligations of insurers in "mixed" actions and an insurer's right to seek reimbursement of defense costs are not necessary to the Court's holding.

UP's brief was written pro bono by Amy Bach, Esq.

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