

Unnamed Individual Insureds Not Obligated to Pay Deductible

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The United States District Court for the Northern District of California, applying California law, has granted individual insureds' motion to dismiss a coverage action against them because the individuals were not parties to the insurance policy and were therefore not obligated to pay the policy's deductible. *Carolina Cas. Ins. Co. v. Lanahan & Reilly, LLP*, 2011 WL 3741004 (N.D. Cal. August 25, 2011).

The insured, a law firm, purchased a Lawyers' Professional Liability Insurance Policy that provided malpractice insurance to the law firm and its employees. The employees were not named insureds under the policy. The insured and several of its employees were sued for malpractice, and the insurer agreed to defend the claim subject to the policy's \$150,000 deductible and a reservation of rights. The insureds failed to pay any amounts within the deductible, prompting defense counsel to move to withdraw. The insurer proposed to the firm that it would continue to defend the insureds provided that the firm tendered payment of the \$150,000 deductible within 30 days. The firm accepted the proposal but failed to pay the deductible.

The insurer filed suit alleging that the insureds breached the policy and the separate agreement by failing to pay the deductible. The insurer sought a declaratory judgment that it had no duty to defend or indemnify the named insured or the individual insureds. The individual insureds moved to dismiss all claims alleged against them on the grounds that they are not parties or signatories to the policy and therefore cannot be liable for any obligations contained in that agreement.

Practice Areas

- D&O and Financial Institution Liability
- E&O for Lawyers, Accountants and Other Professionals
- Insurance
- Professional Liability Defense

In granting the individual insureds' motion to dismiss, the court found that although California law has not addressed the issue of whether an additional insured may be liable to pay the deductible in a policy, courts have held that a beneficiary under an insurance policy has no legal obligation to pay for costs imposed by the policy absent a specific agreement to do so. The court rejected the insurer's argument that the individual insureds are parties to the policy because they were entitled to coverage, finding that being a beneficiary under the policy did not transmute them into parties subject to contractual obligations imposed by the policy. The insurer pointed to a policy provision that explicitly required the individual insureds to pay the deductible if the named insured failed to do so, but these allegations were not pled in the complaint and the insurer failed to attach a copy of the policy to its complaint. Lastly, the insurer argued that even if the individual insureds are not parties or signatories to the policy, they can be compelled to pay as a matter of law. The court rejected this argument on the basis that there is no California law directly on point and that following such authority from another jurisdiction would run afoul of California law. Therefore, the court granted the individual insureds' motion to dismiss with leave to amend.