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Review of 2010 Legislation and Developments

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Developments — 2010

Following are some of the most noteworthy developments in the insurance caselaw in the year 2010.

The Ameron Decision: California Supreme Court holds that an IBCA proceeding constitutes a "suit" under a CGL policy, triggering a duty to defend.

***Ameron Int'l Corp. v. Ins. Co. State of Pa.*, 50 Cal. 4th 1370 (2010)**

Perhaps the most-awaited decision of the year was the California Supreme Court's decision in *Ameron.* That case involved the issue of whether a proceeding before the U.S. Department of the Interior Board of Contract Appeals (IBCA) constitutes a "suit" so as to trigger an insurer's duty to defend under a commercial general liability (CGL) policy. The Court held in a unanimous opinion that such a proceeding is a "suit" and therefore triggers a duty to defend in a standard CGL policy.[1]

In so holding, the Court limited its decision in *Foster-Gardner, Inc. v. National Union Fire Insurance Co.*[2] In *Foster-Gardner,* the Supreme Court took a literal approach to the meaning of the undefined term "suit" in a standard form CGL policy. It adopted a bright-line rule limiting a liability insurer's duty to defend to civil actions in court, and held that an insurer has no duty to defend administrative actions intended to obtain a negotiated settlement of the insured's liability for environmental pollution.[3]

In *Ameron,* the Court did not overrule *Foster-Gardner,* but abandoned the rule that a CGL carrier's duty to defend is limited to civil actions in court. In holding that an insurer is required to defend construction defect claims in adjudicative administrative proceedings before the IBCA, the Court used an approach that requires insurers to evaluate administrative actions to determine whether they are sufficiently "adjudicative" to qualify as a "suit" which the insurer has a duty to defend.[4] Justice Kennard, who dissented in *Foster-Gardner* and has repeatedly criticized the decision, wrote a separate concurring opinion in which she described the *Ameron* holding as "a step in the right direction" and stated that the Court should have simply overruled *Foster-Gardner.*[5]

Ameron opens up the possibility that an insured can respond to a claim or order from the government and trigger the duty to defend by initiating its administrative adjudicatory rights or by filing suit against that governmental entity or other potentially responsible parties. As the Court stated, "Although the contractor thus initiates the IBCA proceeding, the purpose of the proceeding is to resolve the claim against the contractor, who is therefore in the position of a defendant. The factual issues are then framed for adjudication by the pleadings, which consist both of the contractor's complaint and the government's answer."[6]

The decision in *Ameron* potentially impacted another case pending for review last year, *Clarendon American Insurance Co. v. Starnet Insurance Co.*[7] In that case, the Court of Appeal held that the term "suit" obligates an insurer to defend against the mandatory Calderon Act dispute resolution process in construction defect cases.[8] The California Supreme Court initially granted the insurer's petition for review, and then dismissed review without comment. Because the Court of Appeal opinion was depublished, it cannot be cited.

1 *Ameron,* 50 Cal. 4th at 1375.
2 18 Cal. 4th 857 (1998).
3 *Id.* at 878.
4 *Ameron,* 50 Cal. 4th at 1383-84.
5 *Id.* at 1388.
6 *Id.* at 1384.
7 186 Cal. App. 4th 1397 (2010).
8 Cal. Civ. Code, § 1375 et seq.

The courts continue their attempts to clarify the definition of the terms "occurrence" and "accident" in a liability policy.

***Fire Ins. Exch. v. Super. Ct. (Bourguignon)*, 181 Cal. App. 4th 388 (2010)**

In 2010, the courts continued to attempt to clarify the meaning of key policy terms in CGL policies, including the terms "occurrence" and "accident." However, the decisions remain murky and conflicting, and they still fail to provide clear and uniform guidelines to the meaning of these terms.

In *Fire Insurance Exchange*, the Fourth District Court of Appeal held that "[b]uilding a structure that encroaches onto another's property is not an accident even if the owners acted in the good faith but mistaken belief that they were legally entitled to build where they did."[9] Accordingly, the owners' homeowner's insurer "had no duty to defend when the owners were sued by the adjoining landowner as a result of the encroachment."[10]

The court held that "[w]here the insured intend[s] all of the acts that resulted in the ... injury, the event may not be deemed an accident simply because the insured did not intend to cause injury. The insured's subjective intent is irrelevant."[11] The court disagreed with *State Farm Fire & Casualty Co. v. Superior Court*,[12] as departing from the "well-settled rule." *State Farm* held that intentionally throwing someone into a swimming pool is an "accident" because the insured did not intend the victim to hit the concrete and suffer an injury.[13]

Justice Miller dissented in the *Fire Insurance Exchange* case,[14] reasoning that the fact that the insureds intentionally built over the property line did not amount to an intent to encroach, based on *Delgado v. Interinsurance Exchange of Automobile Club of Southern California*.[15] In *Delgado*, the Court held that "An injury-producing event is not an 'accident' within the policy's coverage language when all of the acts, the manner in which they were done, and the objective accomplished occurred as intended by the actor."[16] Justice Miller also criticized the majority's reliance on the theory that a "mistake of fact" does not create an accident, and their reliance on the fact that the insureds failed to take proper precautions as a basis for proving intent to encroach.[17]

Adding further confusion is the decision in *L.A. Checker Cab Cooperative, Inc. v. First Specialty Insurance Co.*,[18] which was depublished on October 27, 2010. In that case, the court held that the focus should be on the conduct directly producing the injury, and therefore an insured employer's allegedly negligent supervision of an employee who had a fight with a passenger does not constitute an "occurrence" or "accident" within the meaning of a general liability policy, even if the employee acted in unreasonable self-defense. The depublication of the decision by the California Supreme Court potentially raises questions about whether the alleged negligence could or should have been found to constitute an "occurrence" or "accident." If so, that could conflict with the holding in the *Fire Insurance Exchange* case.

Key rulings on an insurer's duty to settle, bad faith, and indemnification of punitive damages.

***Howard v. Am. Nat'l Fire Ins. Co.*, 187 Cal. App. 4th 498 (2010)**

Howard produced at least three significant holdings from the First District Court of Appeal:

(1) Duty to Settle: Where multiple insurers are on the risk, an insurer can be liable for failure to settle if the settlement offer exceeds the limits of its own individual policy but is less than the total limits of all policies insuring

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9 *Fire Insurance Exch.*, 181 Cal. App. 4th at 390.
10 *Id.*
11 *Id.* at 392 (citations omitted).
12 164 Cal. App. 4th 317 (2008).
13 *Id.* at 320-21.
14 *Fire Ins. Exch.*, 181 Cal. App. 4th at 401-02.
15 47 Cal. 4th 302 (2009).
16 *Id.* at 311-12.
17 *Fire Ins. Exch.*, 181 Cal. App. 4th at 402.
18 186 Cal. App. 4th 767 (2010), ordered not to be officially published (Oct. 27, 2010).

the risk;

(2) Bad Faith: The bad faith/genuine dispute doctrine does not apply to third party failure to settle cases; and

(3) Punitive Damages: An insurer may be required to indemnify the insured for the settlement where a judgment against the insured, still pending on appeal, includes an award of punitive damages.

The underlying action was a priest molestation case brought by two brothers.[19] Following trial against a Bishop for negligent supervision, the jury found negligence and awarded compensatory and punitive damages to the Howard plaintiffs.[20] The parties then entered into a settlement.[21] Plaintiffs and the Bishop sued the Bishop's three insurers in separate coverage actions, which were consolidated.[22] Trial proceeded against only one insurer, American, after the others settled.[23] In a bench trial, the judge found molestation during the policy period, triggering coverage, and that American acted in bad faith by breaching its duty to defend, settle and indemnify in the underlying litigation.[24]

The Court of Appeal affirmed. The court found that American breached its duty to settle the underlying litigation, supporting a finding of bad faith.[25] American argued that its failure to settle was reasonable because it was never presented with a settlement offer within its own policy limits. The court held that in actions involving a single insurer, a settlement offer within policy limits is necessary to support a finding of bad faith.[26] However, where multiple insurers are on the risk, an insurer can be liable for failure to settle if the settlement offer is less than the total limits of all the policies insuring the risk. Though American's policy limit was $500,000, there was a settlement demand for $1.85 million that was well within the primary insurance policy limits of the multiple insurers, totaling over $4 million. The insurers' aggregate limits far exceeded the settlement demand, and "each insurer's obligation is to cover the full extent of the insured's liability up to policy limits."[27]

The court stated that in a multiple insurer case, the law "'cannot excuse one insurer for refusing to tender its policy limits simply because other insurers likewise acted in bad faith. If this were not the case, insurers on the risk could simply all act in bad faith, thus immunizing themselves from bad faith liability.'"[28] The court went on to find that an excess judgment is not necessarily required in order to support a finding of bad faith failure to settle, particularly where the insured also sustains consequential damages arising out of the insurer's conduct.[29]

Before the *Howard* decision, in cases involving coverage under multiple policies, policyholders and their counsel faced a situation where each insurer would take the position that it had no duty to settle unless the settlement demand was within the limits of its own individual policy. The court clearly rejected that position, holding that each insurer faces bad faith exposure if it rejects a reasonable settlement demand within the combined indemnity limits of all triggered policies.[30]

American also argued that its refusal to settle constituted a genuine dispute about coverage which precluded a finding of bad faith. The court disagreed, noting that the doctrine has been applied only in first party cases. The court held that

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19 *Howard*, 187 Cal. App. 4th at 508.
20 *Id.* at 509.
21 *Id.* at 510.
22 *Id.* at 511.
23 *Id.*
24 *Id.* at 512.
25 *Id.* at 524, 528.
26 *Id.* at 525.
27 *Id.*
28 *Id.*
29 *Id.* at 527.
30 *See also Risely v. Interinsurance Exch.*, 183 Cal. App. 4th 196 (2010) (holding that in the context of a single insurer, a finding of bad faith does not require an excess judgment).
31 *Howard*, 187 Cal. App. 4th at 530.

the doctrine does not apply in a third party case.[31] The court also found that the insurer's coverage position was based on an unreasonable interpretation of plaintiffs' deposition testimony,[32] and that, while "an insurer may reasonably underestimate the value of a case, and thus refuse settlement, an insurer does not act reasonably in using its no-coverage position to refuse settlement altogether."[33]

American also asserted that it was not liable for that portion of the settlement that was based on the award of punitive damages against the Bishop in the underlying litigation, based on the principle that punitive damages are not insurable under California law. The court disagreed, distinguishing the settlement payment from the judgment: "At the time of the settlement, the judgment was on appeal and the Howards were asserting rights to compensatory damages beyond those awarded in the underlying action. The settlement thus went beyond the judgment and encompassed all claims the Howards made, or could make, concerning the Bishop's retention of a molesting priest."[34]

The California Supreme Court denied review of the *Howard* decision as well as defendant insurers' depublication request.

Court applies duty to defend to umbrella insurer.

***Legacy Vulcan Corp. v. Super. Ct.*, 185 Cal. App. 4th 677 (2010)**

In *Legacy Vulcan*, the Second District Court of Appeal held that a carrier must defend its insured when the claim may not be covered by the primary layer policy and "potentially" falls within the carrier's umbrella policy coverage.[35] The Court rejected the lower court's holding that, though the policy provided both excess and umbrella coverage, for purposes of the duty to defend, the insurer's obligations were limited to those of an excess carrier. It also rejected the lower court's holding that the duty to defend was triggered only upon exhaustion of all underlying insurance and required a showing of a claim that was actually covered by the policy. The Court also held that the self-insured retention (SIR) did not limit the duty to defend, and only applied to the carrier's indemnity obligations.[36]

The umbrella policy at issue afforded broader coverage than the primary layer policy. It had an express duty to defend in connection with the coverage: the carrier had "the right and duty to defend any suit against the Insured" if the damages were "not within the terms of the coverage of underlying insurance but within the terms of coverage of this insurance."[37] The court found that this language did not place any limits on the duty to defend and rejected the insurer's argument that the duty was subject to the policy's SIR. As a result, the insured was entitled to an immediate "first dollar" defense from the umbrella carrier. Moreover, since the standard for finding a duty to defend under California law is whether the insured can show a "potential" for coverage, and the umbrella carrier was acting as primary rather than excess coverage, the same standard applied to the umbrella policy.[38]

This decision clarifies that umbrella insurance may "drop down" and function as primary layer insurance where the underlying primary insurance is not available, and, as such, gives an insured a "first dollar" right to payment of defense costs where there is a potentially covered claim.[39] The insured is not required to horizontally exhaust all other primary layer policies before the umbrella policy is triggered.[40] The case is significant because it is the first California case to address the umbrella insurer's defense obligations when the underlying primary has not exhausted.

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32 *Id.* at 531.
33 *Id.* at 529.
34 *Id.* at 532.
35 *Legacy Vulcan*, 185 Cal. App. 4th at 693.
36 *Id.* at 697.
37 *Id.* at 683.
38 *Id.* at 693.
39 *Id.* at 689, 692-93.
40 *Id.* at 697.

Court holds that severability clause as applied to intentional acts exclusion creates ambiguity, requiring interpretation in favor of insured.

***Minkler v. Safeco Ins. Co.*, 49 Cal. 4th 315 (2010)**

In *Minkler*, the California Supreme Court held that a liability policy's exclusion for intentional acts of "an insured" does not exclude coverage for negligently failing to prevent another insured's sexual molestation of a minor, where the policy contains a severability provision which states, "The insurance applies separately to each insured."[41] Although an exclusion for intentional acts of "an insured" normally will bar coverage for all insureds, the severability clause created an ambiguity when applied to the exclusion, resulting in coverage.

In the underlying case, Minkler sued an individual for committing sexual molestation of a minor and the individual's mother for negligently failing to prevent the alleged molestation.[42] Both defendants were insured under a series of homeowners policies which contained an exclusion for harm intentionally caused by "an insured."[43] The policies also contained a severability clause, which stated, "This insurance applies separately to each insured."[44]

The case involved the interplay between the intentional acts exclusion and the severability clause. The Court framed the issue as follows: "'Where a contract of liability insurance covering multiple insureds contains a severability clause, does an exclusion barring coverage for injuries arising out of the intentional acts of "an insured" bar coverage for claims that one insured negligently failed to prevent the intentional acts of another insured?'"[45] The Court rejected the insurer's position that the severability clause was intended to clarify references in the policy to "the insured" and was not intended to have any effect on exclusions based on the acts of "an insured." The Court found that the interplay of the two provisions created a textual ambiguity, and resolved the ambiguity in favor of the insured mother.[46]

This may be the first case in California to address squarely the potential effect of the severability clause on exclusions found in liability policies. It may undermine previous law that an exclusion barring coverage for the excluded act of "an insured" or "any insured" means that no insured is entitled to coverage if one insured committed the excluded act.[47] However, it is consistent with prior decisions of Justice Baxter, who penned the *Minkler* opinion.[48] On the other hand, its impact may be limited to intentional acts exclusions. In any event, it weakens the collective application of policy exclusions and is significant for that reason alone.

Business interruption coverage and bad faith: (1) insured may recover both net income and continuing normal operating expenses without having to offset one against the other; (2) the maximum punitive damage award available where the compensatory damages are "substantial" and the insured is financially vulnerable generally is 1:1; and (3) Brandt fees and prejudgment interest are not part of the compensatory damages for purposes of calculating punitive damages.

***Amerigraphics, Inc. v. Mercury Cas. Co.*, 182 Cal. App. 4th 1538 (2010)**

Amerigraphics was insured under a policy that covered damage to business personal property, which included property used in the business and tenant improvements, and loss of business income due to business suspension.[49] It suffered loss of business after the 9/11 attacks, as well as a flood that damaged its equipment and forced it to relocate,

41 *Minkler*, 49 Cal. 4th at 318-19.
42 *Id.* at 319.
43 *Id.* at 320.
44 *Id.*
45 *Id.* at 321.
46 *Id.* at 324.
47 *See, e.g.*, *Fire Ins. Exch. v. Altieri*, 235 Cal. App. 3d 1352, 1361 (1991).
48 *See, e.g.*, *Safeco Ins. Co. v. Robert S.*, 26 Cal. 4th 758 (2001).
49 *Amerigraphics*, 182 Cal. App. 4th at 1544.
50 *Id.*

and eventually it went out of business.[50]

Amerigraphics sued the insurer Mercury for breach of contract and bad faith after Mercury denied coverage for business interruption because the projected expenses exceeded projected income, and additional operating losses were not sustained during the relevant period.[51] The appellate court rejected Mercury's argument. Under the policy language providing coverage for "(i) Net income ... that would have been earned or incurred if no physical loss or damage had occurred ...; and [¶] (ii) Continuing normal operating expenses incurred...,"[52] an insured is entitled to be paid under *both* subparts without having to offset the two amounts in the event that operating expenses exceed income.[53]

The court upheld the jury's finding of bad faith against Mercury,[54] but modified the judgment to reduce the amount of punitive damages.[55] In determining whether the punitive damages award was constitutionally excessive, the appellate court held, among other things, that when the compensatory damages amount is itself "substantial," a ratio less than 3:1 or 4:1, perhaps no more than 1:1, may be required by due process.[56]

The court also held that *Brandt* fees should not be included in the base compensatory damages amount for purposes of calculating punitive damages, because the jury did not decide *Brandt* fees when it set the amount of the original punitive damages award.[57] The court also ruled that an award of prejudgment interest should not be treated as part of the compensatory damages.[58]

Self-insured retentions and contract interpretation: (1) SIR provisions require named insured to pay SIR, and SIR may not be paid by an additional insured; (2) insurer's subsequent revisions to policy language cannot be used to create ambiguity in the interpretation of prior policy language.

***Forecast Homes, Inc. v. Steadfast Ins. Co.*, 181 Cal. App. 4th 1466 (2010)**

The court held that a liability policy issued to a subcontractor prohibited additional insureds from paying the policy's self-insured retention (SIR) in order to trigger coverage.[59] As a result, a developer that was an additional insured under the policy was not entitled to coverage in a construction defect suit in which the named insured subcontractor was not sued and did not pay the SIR.

The insured developer offered two versions of a policy endorsement regarding the SIR to support its position, and asserted that in any event, the differing language created an ambiguity which should be resolved in favor of the insured. The earlier version defined SIR to mean the amount which "'you or any insured'" must pay,[60] whereas the later version amended the definition to provide that "'Payments by others, including but not limited to additional insureds or insurers, do not serve to satisfy the self-insured retention ....'"[61] The court rejected the insured's position, holding that though the modification "further clarifie[d] the question of who pays, it does not prove the prior version permitted satisfaction of the SIR by an additional insured."[62] That policy "'language could be more explicit does not render it ambiguous.'"[63]

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51 *Id.* at 1547-48.
52 *Id.* at 1544.
53 *Id.* at 1554.
54 *Id.* at 1559.
55 *Id.* at 1567.
56 *Id.* at 1563.
57 *Id.* at 1565.
58 *Id.*
59 *Forecast*, 181 Cal. App. 4th at 1477-78.
60 *Id.* at 1471.
61 *Id.* at 1472 (emphasis omitted).
62 *Id.* at 1481.
63 *Id.*

Allocation among insurers; equitable contribution and burden of proof.

***Scottsdale Ins. Co. v. Century Sur. Co.*, 182 Cal. App. 4th 1023 (2010)**

The court analyzed the burden of proof regarding the measure of recovery in a contribution action by one insurer against another when multiple insurers are obligated to defend and/or indemnify the same claim or loss, and one has paid more than its share of the loss or defended the action with no participation by the others.

The court held that an insurer seeking contribution must prove that it paid more than its "fair share" of the defense and/or indemnity costs for the common insured.[64] In order to satisfy that burden, the insurer must produce the evidence necessary to calculate each insurer's "fair share." The insurer seeking contribution cannot recover "any amount that would result in [it] paying less than its 'fair share,' even if that means that the otherwise liable second insurer will have paid nothing."[65]

Duty to defend, Cumis counsel, and Civil Code § 2860.

***Intergulf Dev. LLC v. Super. Ct.*, 183 Cal. App. 4th 16 (2010)**

The court held that a liability insurer may not arbitrate the amount of fees owed to its insured's independent counsel prior to a determination that the insurer had a duty to defend.[66] A determination that the insurer breached its duty to defend would preclude the insurer from availing itself of the attorney fee and arbitration provisions in California Civil Code section 2860.[67]

Patent infringement claims are potentially covered under a liability policy's advertising injury provision.

***Hyundai Motor Am. v. Nat'l Union Fire Ins. Co.*, 600 F.3d 1092 (9th Cir. 2010)**

The insured Hyundai's website included "build your own vehicle" and parts catalogue features which allowed website users to obtain customized vehicle and pricing information based on their own input.[68] Hyundai was sued by a company owning patents containing methods for generating product proposals for potential automobile customers. Hyundai sought coverage of its defense costs under the coverage of claims for injuries arising out of "misappropriation of advertising ideas."[69]

The court held that the claim triggered a duty to defend under the "contextual reasonableness" standard set forth in *Mez Industries, Inc. v. Pacific National Insurance Co.*,[70] where the question is whether the patents at issue "'involve any process or invention which could reasonably be considered an "advertising injury."'"[71] The court found that the patents involved "a method of displaying information to the public at large for the purpose of facilitating sales, i.e., a method of advertising."[72]

Hyundai also was required to show that it was engaged in "advertising" and that a causal link existed between the alleged injury and the advertising.[73] The "build your own vehicle" feature was found to be "advertising" even though it necessarily provided customized information to specific individuals based on the individuals' input, because the feature is widely distributed to the public at large.[74] The causal connection was satisfied because the patents covered the method for advertising and use of the "build your own vehicle" feature itself was infringement.[75]

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64 *Intergulf*, 183 Cal. App. 4th at 1028.
65 *Id.*
66 *Scottsdale Ins.*, 182 Cal. App. 4th at 21.
67 *Id.*
68 *Hyundai*, 600 F.3d at 1095.
69 *Id.* at 1096.
70 76 Cal. App. 4th 856 (1999).
71 *Hyundai*, 600 F.3d at 1100.
72 *Id.*
73 *Id.* at 1098.
74 *Id.* at 1099-1100.
75 *Id.* at 1103-1104.

Insured may maintain action against insurer for violation of the Unfair Competition Law based on alleged false advertising.

***Zhang v. Super. Ct.*, 178 Cal. App. 4th 1081 (2009), review granted, 105 Cal. Rptr. 3d 886 (2010)**

In 2010, the California Supreme Court granted review of a 2009 decision, *Zhang*. In that case, an insured sued her insurer, alleging misconduct in the handling of her claim for a fire loss. The complaint alleged breach of contract, breach of the covenant of good faith, and an Unfair Competition Law (UCL) claim, and added allegations of misleading advertising based on the insurer's representation that it would "timely pay proper coverage." The UCL claim was based on the insurer's alleged violation of California's Unfair Insurance Practices Act (UIPA). The trial court sustained the insurer's demurrer, relying on *Moradi-Shalal v. Fireman's Fund Insurance. Co.*[76] and *Textron Financial Corp. v. National Union Fire Insurance Co.*[77]

The Court of Appeal reversed and distinguished *Moradi-Shalal* and *Textron*. While *Moradi-Shalal* stands for the broad proposition that insurers cannot be held liable solely for violations of the UIPA, and *Textron* extended that holding to UCL claims predicated on violations of the UIPA, neither case holds that insurers who violate the UIPA can never be held liable in tort to an injured party. The court also held that insurers can be liable based on conduct proscribed by the UIPA, as long as it is conduct otherwise prohibited under the law. The conduct alleged by Zhang, false advertising and fraud, was not only improper under the UIPA, but also under tort law. Thus, the court permitted Zhang to pursue the UCL claim.

This case directly conflicts with *Textron*, and that may be why the California Supreme Court granted review. If the decision is affirmed, it will create a significant exception to the principles set forth in *Moradi-Shalal*.

Contract rescission rules

***Village Northbridge Homeowners Ass'n v. State Farm Fire & Cas. Co.*, 50 Cal. 4th 913 (2010)**

The court held that an insured may not sue its insurer for fraudulent inducement to enter into a settlement based on the insurer's misrepresentation of policy limits under a property insurance policy without first rescinding the settlement and release and returning the proceeds of the settlement to the insurer.[78] Although courts have statutory authority to defer restoration of settlement proceeds until entry of judgment in the insured's fraud action, an insured may not affirm the settlement agreement and sue for fraud at the same time.[79]

Post-claim underwriting

***Nieto v. Blue Shield of California Life & Health Ins. Co.*, 181 Cal. App. 4th 60 (2010)**

The court held that a health insurer properly rescinded an insured's policy based on material misstatements in the application for insurance, despite the fact that the application was not attached to the policy when issued.[80] The rescission did not violate California Insurance Code section 10384's prohibition on post-claim underwriting because the underwriting process included "'appropriate steps to ensure the accuracy and completeness'" of the application.[81]

Homeowner policy cooperation clause; reliance on advice of counsel defense does not excuse failure to cooperate.

***Abdelhamid v. Fire Ins. Exch.*, 182 Cal. App. 4th 990 (2010)**

A homeowner failed to support breach of contract claims against her insurer based on failure to pay for fire damage to her house when the record showed that she did not provide damage estimates required for claims under her policy, and she refused to answer questions about her financial situation during an examination under

76 46 Cal. 3d 288 (1988).
77 118 Cal. App. 4th 1061 (2004).
78 *Village Northbridge*, 50 Cal. 4th at 917-18.
79 *Id.* at 928-29.
80 *Nieto*, 181 Cal. App. 4th at 77, 81.
81 *Id.* at 85.

oath.[82] Reliance on advice of counsel did not justify refusal to answer property questions as part of an insurer's investigation of the insured's claim.[83] The insurer demonstrated substantial prejudice from the homeowner's noncompliance, because the information sought went to the heart of the insurer's investigation of whether the fire was arson and whether the homeowner was involved.[84]

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82 *Abdelhamid,* 182 Cal. App. 4th at 992.
83 *Id.* at 1003-05.
85 *Id.* at 1007.