



BUSINESS & FACILITIES

News and Legal Developments in Business,
Contracts, Construction and Property

Insurance Policy Defense Provisions Do Not Automatically Bestow Defense Rights on Third Parties Not Named as Additional Insureds.

Chris LaBarbera hired Knight Construction to remodel a house. Their contract required Knight to defend and indemnify Mr. LaBarbera for all claims arising out of the work. Knight obtained a general liability insurance policy from Security National Insurance Company that covered damages Knight was obligated to pay for third party bodily injury. Knight was the “insured” under the policy. Mr. LaBarbera was not named as an “additional insured” under the policy.

A stucco subcontractor, Nicholas Paz-Ramirez, was electrocuted while working on the house and suffered catastrophic injuries. Mr. Paz-Ramirez sued both Mr. LaBarbera and Knight. Security National defended Knight in the litigation and Mr. LaBarbera’s personal insurance provider, Underwriters, defended him.

Mr. LaBarbera feared that his liability might exceed the limits of his personal policy; accordingly, his personal counsel sent a letter to Knight’s counsel tendering defense and indemnity based on the indemnity provision of the construction contract. Security National received a copy of this letter and responded that it did not need to provide a defense as Mr. LaBarbera was not an additional insured under the insurance policy.

Mr. LaBarbera ultimately settled with Mr. Paz-Ramirez for an amount of \$465,000. In turn, Mr. LaBarbera and Underwriters sued Knight and Security National, but ultimately dismissed their claims against Knight for breach of the construction contract. They pursued claims against Security National for breach of the insurance policy terms by failing to defend and indemnify Mr. LaBarbera. Mr. LaBarbera and Underwriters sought damages to cover the \$465,000 settlement amount, \$100,000 for attorneys’ fees, and other costs and damages.

Security National argued that Mr. LaBarbera was not an insured, additional insured, or an intended third party beneficiary of the insurance policy. Security National also argued that they had no obligation to defend Mr. LaBarbera as the indemnitee defense clause in the insurance policy only required them to defend Mr. LaBarbera if certain conditions were met, including that there is not conflict between the interests of the insured and the indemnitee. Here, Security National’s defense was to blame the accident on Mr. LaBarbera, which created a conflict between Knight’s and Mr. LaBarbera’s interests. The trial court agreed with Security National and held that there was an apparent conflict in litigation strategies and thus a condition of the

indemnity clause was not met. It granted summary judgment in favor of Security National. LaBarbera and Underwriter appealed.

On appeal, the court agreed with Security National that Mr. LaBarbera was not an insured or intended third party beneficiary of the Knight insurance policy and therefore is not a party to that policy and had no standing to bring claims against Security National. Mr. LaBarbera could only benefit if Security National and Knight *intended* that Mr. LaBarbera personally obtain the benefits of the indemnitee defense clause in the insurance policy. The court found that Security National and Knight intended the indemnitee defense clause benefit themselves by permitting them to provide a joint defense to any claims. If the indemnitee defense clause conditions were met, meaning Mr. LaBarbera's and Knight's interests did not conflict, Mr. LaBarbera would have been an incidental beneficiary to the policy. However the parties did not enter into the policy with the intention to benefit Mr. LaBarbera.

LaBarbera v. Security National Insurance Co. (2022) 86 Cal. App. 5th 1329.

This case signals the importance of ensuring your vendor's insurance policy names you as an additional insured under that policy to avoid facing claims that you are not an intended beneficiary of the policy and are not owed any defense under that policy.

This article was written by, Associate [Madison Tanner](#) from the San Diego office and Partner [Christopher Fallon](#) from the Los Angeles office of Liebert Cassidy Whitmore. Madison and Christopher are members of the firm's Business and Facilities practice group, which assists public agency clients in matters including construction, contracts, purchase agreements and real property. Madison can be reached at (619) 481-5900 or at mtanner@lcwlegal.com. Christopher can be reached at (310) 981-2000 or at cfallon@lcwlegal.com. For more information regarding the update above or about our firm please visit our website at <http://www.lcwlegal.com>, or contact one of our offices below.

To subscribe to this e-newsletter please visit: <https://www.lcwlegal.com/>

Liebert Cassidy Whitmore publishes the Business and Facilities Update as a service to our clients and other friends for informational purposes only. It is not intended to be used as a substitute for specific legal advice or opinions and the transmission of this information is not intended to create an attorney-client relationship between sender and receiver. You should not act upon this information without seeking professional counsel.

6033 W. Century Blvd.
5th Floor
Los Angeles, CA 90045
(310) 981-2000

135 Main Street
7th Floor
San Francisco, CA 94105
(415) 512-3000

5250 North Palm Ave.
Suite 310
Fresno, CA 93704
(559) 256-7800

401 West "A" Street,
Suite 1675
San Diego, CA 92101
(619) 481-5900

400 Capitol Mall
Suite 1260
Sacramento, CA 95814
(916) 584-7000