THE RECORDER

TUESDAY, JANUARY 12, 2010 134TH YEAR NO. 7

www.callaw.com An ALM Publication

Ruling for insurers now on the books

By Kate Moser
RECORDER STAFF WRITER

In a case that drew *amicus* briefs from California insurance companies and trial lawyers, a state appeal court published an opinion Monday interpreting an often-used exclusion in a commercial general liability policy in an insurer's favor.

The Second District Court of Appeal, interpreting a "products" and "completed operations" exclusion, wiped out a $12 million judgment obtained against the insurer, saying it shouldn't be on the hook for a negligent inspection its policyholder may have performed. In doing so, the court reversed Los Angeles County Superior Court Judge Jane Johnson, who had ruled that the exclusion applied only to claims for product liability, not for negligent services.

Baker v. National Interstate Insurance Company, B204860, was brought by the family of a bus driver killed when her seat broke loose in an accident. The suit accused the bus company that had serviced the vehicle of negligence. The ruling, first filed as unpublished on Dec. 30, reversed the $12 million judgment the woman's family ultimately got against the bus company's insurer, American National Fire Insurance Co.

The insurance companies and trial lawyers weighing in on the case disagreed over whether the state Supreme Court had settled the question back in 1967 in *Insurance Co. of North America v. Electronic Purification Co.*, 67 Cal.2d 679. But the Second District, led by Justice Tricia Bigelow, concluded that *Electronic Purificiation*'s interpretation of a policy exclusion was "helpful, but not entirely dispositive." Justices Madeleine Flier and Laurence Rubin concurred.

"I think the court got it right in terms of working through the rules of interpretation that the California Supreme Court has explained for insurance policies," said David Capell, a partner in Gordon & Rees' San Francisco office who submitted an *amicus* brief on behalf of the Association of California Insurance Companies. He said the trial court didn't understand that the insurance policy language was "materially different" from the language of the policy at the heart of *Electronic Purification.*

The Second District said that the exclusion language at issue in *Electronic Purification* was unclear, but that the American policy was "unambiguous and easily understandable" to a layperson.

"We simply do not understand how Four Winds' inspection of a bus, in return for payment, could not fall within the meaning of the words 'work or operations performed' by Four Winds," Bigelow wrote.

A lawyer for *amicus curiae* Consumer Attorneys of California said the Second District decision could indicate a recurring theme — rules of interpretation that are more favorable to insurance companies. "Ultimately to just assert that a common businessman reading that policy would have understood what's being excluded makes no sense," Jill McDonell said.

But in the opinion, Bigelow wrote that any difference between the outcome in *Electronic Purification* and the outcome in *Baker* was a reflection of the differences in language in the two policies. "We have not decreed as a matter of law that 'products' and 'completed operations' shall no longer be considered 'related' elements under a CGL policy; that determination is governed by language used in a particular insurance policy."

The Second District said that the exclusion language at issue in Electronic Purification was unclear, but that the American policy was 'unambiguous and easily understandable' to a layperson.

Horvitz & Levy and Sedgwick, Detert, Moran & Arnold represented American, while The Arkin Law Firm and Mardirossian & Associates represented the plaintiffs.

Reporter Kate Moser's e-mail address is kmoser@alm.com.