

THOUGHT LEADERSHIP

News

COURT OF APPEALS AFFIRMS NO DUTY TO DEFEND THIRD-PARTY SUITS FOR DISCRIMINATION AND CONSPIRACY

Newsbrief

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Recently, the Dallas Court of Appeals of Texas affirmed Liberty Mutual's summary judgment on issues relating to the insurer's duty to defend under a commercial liability insurance policy. In *Dorvin D. Leis Company of Texas, Inc. v. Ohio Casualty Insurance Company d/b/a Liberty Mutual Group*, No. 05-17-00548-CV, 2018 WL 850931 (Tex. App.—Dallas Feb. 14, 2018), Appellant Dorvin D. Leis Company ("Leis") argued the trial court erred in granting Liberty Mutual's motion for summary judgment. The Court disagreed and affirmed the trial court decision.

Leis is a heating and air conditioning contractor insured by Liberty Mutual. The policy provides coverage for "bodily injury" or "property damage." Leis was sued in two separate actions by Faisal Saleh. Saleh alleged he called Leis in June 2016 to have his thermostat fixed and left a voicemail which a Leis employee returned the next day. Saleh requested pricing information which the employee indicated they would obtain, however Saleh alleged the employee never responded. Saleh then sent an email to Leis and "mentioned that he plans to sue [Leis] in court for discrimination unless [Leis] pays a settlement out of court." Leis did not respond to Saleh's email or subsequent phone calls and Saleh filed suit. Saleh's suit alleged Leis discriminated against him based on his name and alleged "Defendant does not tell the average American customer that it will call him back then neglect him completely and refuse to pick up when he calls..." Saleh alleged four counts of discrimination "based on race, religion and/or ethnic background..." and demanded damages of \$150,000.00.

Saleh's second suit named Leis, Leis' attorney, and a private process server. Saleh alleged the process server filed a defective return of service, amended the document after being informed about the errors, and "intentionally put incorrect information on there again." Saleh further alleged Leis and Leis' attorney paid the process server to put defects in the return of service to prevent Saleh from collecting a default judgment.

Leis asked Liberty Mutual to defend the lawsuits, but Liberty Mutual found no allegations of "property damage" or "bodily injury" and was unable to extend coverage. Ultimately Leis retained its own counsel and dismissed the Saleh suits; but thereafter sued Liberty Mutual for breach of contract and alleged violations of Chapters 541 and 542 of the Texas Insurance Code. Both parties filed cross motions for summary judgment; Leis argued that Liberty Mutual was required to provide defense under the terms of the policy, while Liberty Mutual argued that the Saleh suits did not plead covered occurrences under the policy. The trial court denied Leis' motion and granted Liberty Mutual's. Leis

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then appealed.

Applying the relatively strict, Eight Corners' Rule applicable to the duty to defend in Texas, the Court noted that an insurer's duty to defend is determined by the four corners of third-party plaintiff's pleadings, considered in light of the four corners of the policy provisions, without consideration for the truth of the allegations. Analyzing the allegations in Saleh's petitions, under the coverage afforded by the policy, the Court found that Liberty Mutual had no duty to defend Leis. The court observed that in the first lawsuit, Saleh alleged discrimination based on his race, religion or ethnic background causing damage; while the second suit alleged damages due to conspiracy in filing a false return of service. Because neither suit asserted claims which constituted "bodily injury" or "property damage" as defined and covered under the terms of the policy, Liberty Mutual had no duty to defend Leis. Because there was no duty to defend, Liberty Mutual did not breach the contract or violate the Insurance Code and was entitled to summary judgment as a matter of law.