

Insurance Law Update

Florida Supreme Court Rules Third-Party Payments Satisfy Self-Insured Retention

By *Ravi Shankar*

PRACTICAL POLICYHOLDER ADVICE

In an issue of first impression, the Florida Supreme Court recently held that a policyholder's self-insured retention (SIR) was satisfied by payments from a third-party. While this decision turned on the precise policy language at issue, it reinforces important rules of policy interpretation. General terms will be construed in a policyholder-friendly manner. Moreover, to place the risks associated with ambiguous policy wording on the insurers who drafted the policies, the court acknowledged that policyholders may compare general and specific language used in different, though similar, policies.

Whether a policyholder may satisfy a SIR through payment by a third-party was the subject of a recent Florida Supreme Court decision. *Intervest Construction of Jax, Inc. v. General Fidelity Insurance Co.*, No. SC11-2320, ___ So. 3d ___, 2014 WL 463309 (Fla. Feb. 6, 2014).

In *Intervest*, ICI Homes, Inc. (ICI Homes), a construction company, sought indemnification from its subcontractor, Custom Cutting, Inc. (Custom Cutting), regarding a personal injury action. 2014 WL 463309, at *1. ICI Homes agreed to pay the underlying claimant \$1.6 million after a mediation, \$1 million of which was satisfied by Custom Cutting's general liability insurer. *Id.*

The insurance dispute arose over who was obligated to pay the remaining \$600,000: ICI Homes or its own general liability insurer, General Fidelity Insurance Company (General Fidelity). Each paid the homeowner \$300,000. *Id.* at *1-2. Litigation ensued between ICI Homes and General Fidelity over whether ICI Homes had satisfied the \$1 million SIR in the policy issued by General Fidelity. *Id.* at *2.

The policy language regarding the SIR stated in relevant part:

3. We have no duty to defend or indemnify unless and until the amount of the "Retained Limit" is exhausted by payment of settlements, judgments, or "Claims Expense" by you.

...

6. The "Retained Limit" will only be reduced by payments made by the insured.

Id. at *3-4. General Fidelity argued that the \$1 million payment by Custom Cutting's insurer could not exhaust the SIR because the money originated from Custom Cutting, not ICI Homes. *Id.* at *2. The parties cross-moved for summary judgment. *Id.*

The district court granted General Fidelity summary judgment, relying on the policy language and California cases addressing the same issue but under different policy language. *Id.* at *2, 4. The district court's decision relied upon the language of the SIR – "payment ... by you" and "only ... payments made by the insured" – as

unambiguously requiring the SIR to be paid by the policyholder rather than a third-party. *Id.*

On appeal, the Eleventh Circuit determined there was no controlling Florida law, found the California cases unpersuasive due to materially different policy language and certified the following question to the Florida Supreme Court:

Does the General Fidelity policy allow the insured to apply indemnification payments received from a third-party towards satisfaction of its \$1 million self-insured retention?

Id. at *2-3, 5.

The Florida Supreme Court answered yes, holding that “by you” and “by the insured” did not require payments to originate from the policyholder’s own funds. *Id.* at *7-8. The court contrasted policies with more restrictive language requiring, for example, payment from the policyholder’s “own account.” *Id.* In the alternative, the Court explained that the \$1 million payment by Custom Cutting’s insurer was in fact “by the insured,” ICI Homes. *Id.* at *8. According to the court, ICI Homes presumably paid a premium to Custom Cutting in exchange for indemnification. *Id.*

Given the dearth of cases addressing this issue and the common fact-pattern involved, *Intervest* may well be persuasive nationwide. The Florida Supreme Court’s analysis reinforces important rules of policy interpretation: General terms, such as “by you” in a SIR, will be construed in a policyholder-friendly manner. Moreover, to place the risks associated with ambiguous policy wording on the insurers who drafted the policies, the court acknowledged that policyholders may compare general and specific language used in different, though similar, policies.

Ravi Shankar would like to thank Brian Scarbrough (Partner, Washington, DC) for his contributions to this article.

Contact Us



Ravi S. Shankar
Associate

Phone: 312 840-7673
Email: rshankar@jenner.com
[Download V-Card](#)



Brian S. Scarbrough
Partner

Phone: 202 637-6306
Email: bscarbrough@jenner.com
[Download V-Card](#)