

Help Me Help You: A Primer on the Cooperation Clause

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Insurance policies set forth an exchange of promises and conditions. The provision requiring the insured to “cooperate” with the insurer is one such condition. The nature of the obligation itself has generally raised little controversy. Indeed, it is found in the vast majority of insurance policies in one form or another. But its reach should not be underestimated, insofar as claims have been dismissed outright based on the insured’s failure to cooperate with its insurer. While dismissal may involve egregious facts, the cooperation clause is unambiguous and fully enforceable, and has the potential of resulting in the complete forfeiture of coverage where it is breached. Moreover, forfeiture of coverage based on the cooperation clause is as conclusive a result as if coverage were excluded based upon an exclusion or the untimely notice of a claim.

The Rationale of the Cooperation Clause

The cooperation clause is frequently included in the notice provisions of a standard general liability policy, and while the duty to cooperate is often couched in the mechanics of notice and providing papers to the insurer, it may stand as an independent clause as well. The clause generally requires the insured to cooperate with the insurer in the investigation, settlement or defense of a lawsuit, and is considered an “essential” or “material” term of the insurance policy.¹ While cases may refer to the duty to cooperate as a mutual one, the clause is primarily meant for the protection of the insurer, in its efforts to learn information about the claim for purposes of handling and adjustment.² And in case there was any doubt, at least one case felt compelled to define the term “cooperation,” noting that it requires a joint operation, a common effort or labor.³ In view of the financial stake that an insurer has in the outcome of a claim, a court will not hesitate to find a breach of the cooperation provision where the insured’s failures are amply demonstrated.⁴

Assist in the Investigation of the Claim

Some cooperation provisions may specify the obligations that are expected of the insured, including filing responsive pleadings, attending hearings, timely reporting to the insurer on the status of a claim, and providing documents, information and correspondence that are reasonably requested. If a subrogation right is pursued, the clause may also require the insured to assist the insurer in the prosecution of such an action.⁵ Ultimately, the cooperation clause requires that the insured make a “full and frank” disclosure to its insurer.⁶

Aid in the Determination of Coverage

The insured’s cooperation enables the insurer to obtain knowledge and facts concerning the incident giving rise to a claim while the information is still fresh.⁷ In that regard, the clause has been invoked as an alternative to the notice provision, to support a finding of no-coverage where the insured failed to timely notify the insurer of a claim.⁸ Like compliance with a notice provision, compliance with the cooperation clause fulfills the right of the insurer to promptly obtain relevant information that will help it decide its coverage obligations under the policy and make proper adjusting decisions.⁹ The argument by the insured that the cooperation clause should not be used to gather information bearing on the existence or absence of coverage, should be rejected.¹⁰

Thus, just like a notice provision, the clause contemplates not only cooperation in the adjustment of a claim, but a potential denial of coverage as well. The clause is especially important in circumstances where only the insured has the information necessary for a coverage determination, yet declines to share such information with the insurer. Withholding this kind of information results in what one court describes as the “quintessence of prejudice” to the insurer.¹¹

Condition Precedent – Failure to Meet the Condition Can Forfeit Coverage

The cooperation clause is significant since it is considered a condition precedent to coverage.¹² If the condition is not precisely satisfied, no liability to the insurer will attach.¹³ Accordingly, when the insured deliberately fails to cooperate with its insurer in the investigation of a covered claim as required by the policy, the condition will remain unsatisfied, and the insurer may disclaim coverage.¹⁴

Totality of the Circumstances

The “totality of the circumstances” will be considered in evaluating whether an insured’s breach of the insurance contract by failing to comply with the obligations of the cooperation clause is material.¹⁵ As stated by one court, cooperation “implies, not an abstract conformity to ideal conduct, but a pragmatic question to be determined in light of the particular facts and circumstances.”¹⁶ It is through this lens that the courts will decide whether a material breach of the cooperation clause has occurred.

The Standard: When Has a Breach Occurred?

The standard for establishing a breach justifying forfeiture of coverage requires a review of the insurer’s efforts to secure the cooperation of the insured, and the insured’s attitude in response. In New York, a threefold test is applied, and many states appear to follow some variation of this test, while not always explicitly expressing the elements in the same manner as the New York courts have. The elements of the test are as follows. First, the insurer must demonstrate that it acted diligently in seeking to bring about the insured’s cooperation. Second, the insurer must show that its efforts were reasonably calculated to obtain the insured’s cooperation, and third, the insured must conduct itself with an attitude that shows a willful and avowed obstruction of the insurer’s efforts.¹⁷ Needless to say, the test for determining the insured’s breach in New York has been described as a “heavy burden”¹⁸ on the insurer subject to strict scrutiny.¹⁹

The reason the burden appears heavy, at least with respect to third-party claims, is an underlying public policy that seeks to avoid penalizing the innocent claimant, by forfeiting the coverage due to the “imprudence” of the defendant-insured, over whom the claimant has no control.²⁰ This burden on the insurer, however, may not be as heavy in first-party coverage claims, where the insured, unlike the injured claimant, has full control over coverage.²¹ The burden is also ameliorated with respect to first-party claims, in that the insurer is not expected to put forth evidence that the insured “openly avowed” an intention to obstruct the insurer’s efforts – rather, it must offer sufficient evidence from which the fact finder could infer that the insured’s failure to cooperate was indeed deliberate.²² Although a finding of non-cooperation may be inferential, the evidence must be “practically compelling.”²³ Such evidence may support an inference of non-cooperation even if it is based only on the insured’s failure to act.²⁴

Must the Insurer Show Prejudice?

In New York, the insurer is not required to establish that it was prejudiced as a result of the insured's failure to cooperate in order to deny coverage.²⁵ Many states, on the other hand, require a showing of prejudice.²⁶ But even in those states, if a judgment is entered against an uncooperative insured in the underlying suit, the insurer does not have to prove a negative by showing what witnesses it would have discovered, what defense strategy it might have implemented and what settlement it might have reached – rather, the entry of an adverse judgment against the insured is enough to show prejudice where the insurer was deprived of the opportunity to defend.²⁷ Furthermore, since the cooperation clause is in part intended to provide the insurer with the right to obtain information to determine coverage issues, if the insured's conduct impairs the insurer's presentation of coverage defenses, prejudice will be found.²⁸ Thus, the importance of the cooperation clause in the context of enabling the insurer's coverage analysis should not be underestimated by the insured.

Dealing With the Recalcitrant Insured

A finding of non-cooperation will require evidence demonstrating a sustained effort by the insurer to bring about the cooperation of a recalcitrant insured. This is a "critical" factor in evaluating whether a breach of the clause will support a forfeiture of coverage, and a meager effort will not suffice.²⁹ Accordingly, depending on the circumstances, an insurer may need to do more than send letters to an insured whose whereabouts are in doubt.³⁰ And the insured's failure to answer those letters alone might not support the inference of an obstructionist attitude.³¹ A court might find that the insured lacked any motivation to refuse cooperation or believed it had nothing to offer the insurer.³² A court should always be mindful, however, of the fact that diligence within the environs of the cooperation clause is a two-way street.³³

One More Time: Diligence by the Insurer

With respect to the insurer's diligence in bringing about the cooperation of the insured, the courts will examine closely the words and conduct of the insurer. A substantive basis for an assertion that the insured is not cooperating will ordinarily prevail over a conclusory statement that the insured should follow the insurer's instruction in connection with the handling of a case.³⁴ The insurer's effort must also be reasonably calculated to bring about the insured's cooperation. This aspect has been interpreted to mean that the insurer, rather than close the door on any opportunity of the insured to remediate the failure to cooperate, should undertake some action that will enable the insured to restore coverage.³⁵ If the insured substantially complies in attempting to fulfill its cooperation obligation, and its delays are neither lengthy nor willful, and otherwise explained to the court's satisfaction, preclusion of a claim is unlikely.³⁶ But a partial compliance is insufficient,³⁷ and some courts may require the insured's strict compliance with its cooperation obligation.³⁸ Certainly once the insured is in breach of the clause, the breach cannot be cured by subsequent cooperation.³⁹ Thus, it is incumbent on the insured to commit to timely cooperation at all times.

If the insurer has already disclaimed coverage, a court may conclude that the insurer gave up the right to continue insisting on its insured's compliance with the cooperation provision,⁴⁰ although the insured's continuing refusal to cooperate might still be taken into account.⁴¹ In any case, the insurer will not be allowed to "remain on the sidelines" in circumstances where the insured's cooperation becomes an issue.⁴²

An Obstructionist Approach Will Lead to Forfeiture

The insurer should make a “substantial” effort showing a reasonable degree of skill in trying to bring about the insured’s cooperation.⁴³ This can be accomplished by making the insured fully aware of its contractual obligation to cooperate with the insurer, such that willful obstruction in response to such an effort can be inferred.⁴⁴ If the insurer makes a compelling case on the insured’s attitude, a court will enforce the cooperation obligation and rule that there is no coverage available.⁴⁵ The nature of the willful and avowed obstruction by the insured will be evaluated in the context of the insurer’s diligent effort to elicit cooperation.⁴⁶ Thus, whether the obstruction is passive or active, the avowed nature of the insured’s conduct will still be measured in relation to the insurer’s effort to persuade the insured to conduct itself differently. Ultimately, whether the insured’s conduct constituted a breach of the cooperation provision will be a factual question for a jury to decide, involving a balancing of the duties of the insured with the insurer’s duty to exercise good faith in bringing about that cooperation.⁴⁷

Give Us the Documents!

Disputes may arise with respect to the scope of the insurer’s information requests. Just because an insured declines to produce particular information in the underlying litigation is not necessarily a basis to withhold its production to the insurer. Indeed, the scope of information that may be legitimately requested by the insurer is considered broader than the right of discovery in civil litigation.⁴⁸ Clearly, the insured’s willful failure to provide material and relevant documents to its insurer – or in some cases, such as with first-party loss policies, to submit a sworn statement – will constitute a material breach of the policy that bars recovery.⁴⁹ Even if the documents are arguably sensitive in nature, such as financial records, the refusal to provide them to the insurer may be grounds for a disclaimer of coverage.⁵⁰ In those situations, the insured and insurer may enter into an agreement to maintain the confidentiality of the records.⁵¹ The scope of the confidentiality and the insurer’s right of further disclosure to third parties where necessary, such as reinsurers or auditors, are usually negotiated. Where the insured is repeatedly warned that its failure to provide material documentation could lead to a disclaimer of coverage, it faces a real risk of forfeiting coverage – even where its failure to timely cooperate was based on advice of counsel.⁵² While disputes as to logistical details may not rise to the level of actionable non-cooperation,⁵³ the insured is well advised to demonstrate substantive cooperation in any event. Likewise, the insurer should specify the documents it requests from the insured.⁵⁴ Statements given to the insurer that contradict subsequent statements in court may be ground for forfeiture.⁵⁵ Inaccurate statements made in a policy application may also play a role in a court’s determination that the insured has breached the cooperation clause.⁵⁶ Nor will the corporate insured be heard to argue that a particular officer’s failure to cooperate should not be imputed to the detriment of the corporation.⁵⁷ And, significantly, as electronic discovery and document integrity become critical, where an insured’s discovery abuses and document destructions lead to the entry of a default judgment, the insurer may be excused from its coverage obligations to the extent the insured’s violations constitute a breach of its cooperation obligations.⁵⁸

Independent Counsel Issues

Where the insured has exercised its right to select independent counsel due to a conflict of interest with the insurer, the reach of the cooperation clause may be impacted. Thus, in one case, the insured did not oppose an indemnification claim by a third party insofar as it would risk coverage and would appear to strengthen the plaintiff’s claims. The insurer objected to this course of action, but could not disclaim coverage for lack of cooperation, as the court held

counsel's ethical obligations to the insured-client trumped any harm that might result to the interests of the insurer.⁵⁹

Voluntary Payment and Admission of Liability Issues

While most standard liability policies contain a provision prohibiting the insured from making voluntary payments or admitting liability, the cooperation obligation may also be considered in conjunction with these provisions, to the extent that the conduct of the insured also implicates a failure to cooperate. Thus, the cases may cite the cooperation provision together with the admission of liability provision in finding a forfeiture of coverage.⁶⁰ For example, the insured's unilateral confession of judgment binding the insurer may constitute a violation of the cooperation clause.⁶¹ In jurisdictions that require a showing of prejudice to the insurer prior to finding a forfeiture of coverage, the showing may be difficult where the insured's liability was not in doubt.⁶² While flawless discovery responses may not be required,⁶³ where the insured had no qualifications to admit to facts or opinions concerning its liability, the insurer should be able to establish prejudice.⁶⁴ The issue becomes especially important where a breach of the voluntary payment provision does not require a showing of prejudice, while the cooperation or notice provisions might.⁶⁵ The refusal of the insurer to become involved in any settlement discussions, however, may relieve the insured from its obligation to cooperate.⁶⁶ Insureds should be careful in their conduct under both provisions.

Cooperation Is Key

Given the increasing stakes of litigation, the insured and insurer should appreciate the importance of the cooperation clause with respect to their performance under the policy. For the insurer, it is an essential tool that enables it to learn the facts about the claim and make coverage determinations. The insured, on the other hand, should always share as much information as possible with its insurer in furtherance of its obligations. Where these two objectives do not meet, a court may err on the side of caution and rule in the insured's favor in a close case. But where the combination of the insured's attitude, the nature of the breach and the harm to the insurer are evident, the insured faces a substantial probability of forfeiting coverage.

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¹ *National Grange Mutual Insurance Co. v. Austin*, 23 A.D.2d 776, 777, 258 N.Y.S.2d 439, 441 (N.Y. App.Div. 1965); *Hurston v. Georgia Farm Bureau Mutual Insurance Co.*, 148 Ga.App. 324, 325, 250 S.E.2d 886, 888 (1978).

² *Clark Equipment Co. v. Arizona Property & Casualty Insurance Guaranty Fund*, 189 Ariz. 433, 442, 943 P.2d 793, 802 (1997).

³ *State Farm Mutual Auto. Insurance Co. v. Secrist*, 33 P.3d 1272, 1275 (Col. Ct. App. 2001).

⁴ *Atlantic Mutual Insurance Co. v. Struve*, 210 A.D.2d 112, 114, 621 N.Y.S.2d 5, 7 (App.Div. 1994).

⁵ *Lumpkins v. Grange Mutual Cos.*, 553 N.E.2d 871, 874 (Ind. Ct. App. 1990).

⁶ *State Farm Mutual Auto. Insurance Co. v. Gregorie*, 131 Md.App. 317, 325, 748 A.2d 1089, 1094 (2000); *Dietz v. Hardware Dealers Mutual Fire Insurance Co.*, 88 Wis.2d 496, 503, 276 N.W.2d 808, 812 (1979); *Hurston*, *supra* note 1.

⁷ *Weissberg v. Royal Insurance Co.*, 240 A.D.2d 733, 734, 659 N.Y.S.2d 505 (N.Y. App. Div. 1997).

⁸ *American States Insurance Co. v. National Cycle, Inc.*, 260 Ill.App.3d 299, 631 N.E.2d 1292 (App.Ct. 1994); *City of New York v. Continental Casualty Co.*, 27 A.D.3d 28, 31-32, 805 N.Y.S.2d 391, 393-94 (App.Div. 2005)

⁹ *Evans v. International Insurance Co.*, 168 A.D.2d 374, 375, 562 N.Y.S.2d 692, 694 (App.Div. 1990); *Davis v. Allstate Insurance Co.*, 204 A.D.2d 592, 594, 612 N.Y.S.2d 195, 196 (N.Y. App. Div. 1994); *American Int'l Specialty Lines Insurance Co. v. Continental Casualty Insurance Co.*, 142 Cal.App.4th 1342, 1366 (2006); *Smith v. Nationwide Mutual*

- Insurance Co.*, 175 Vt. 355, 360, 830 A.2d 108, 113 (2003); *Pilgrim v. State Farm Fire & Casualty Insurance Co.*, 89 Wash.App. 712, 719, 950 P.2d 479, 483 (1997).
- ¹⁰ *MetLife Auto & Home v. Cunningham*, 59 Mass.App.Ct. 583, 589, 797 N.E.2d 18, 23 (2003); *Waste Mgmt., Inc. v. Int'l Surplus Lines Insurance Co.*, 144 Ill.2d 178, 204, 161 Ill.Dec. 774, 579 N.E.2d 322 (1991).
- ¹¹ *MetLife Auto*, *supra* note 10 at 591-92.
- ¹² *American Transit Insurance Co. v. Sartor*, 3 N.Y.3d 71, 78, 781 N.Y.S.2d 630, 634 (N.Y. 2004); *Wilson v. Farmers Insurance Group*, 655 N.W.2d 414, 416 (N.D. 2003).
- ¹³ *Chrysler First Financial Services Corp. of America v. Chicago Title Insurance Co.*, 156 Misc.2d 814, 822-23, 595 N.Y.S.2d 302, 308 (N.Y. Sup. Ct. 1993).
- ¹⁴ *New York Central Mutual Fire Insurance Co. v. Salomon*, 11 A.D.3d 315, 316, 782 N.Y.S.2d 730, 732 (N.Y. App. Div. 2004); *Lentini Bros. Moving & Storage Co. v. New York Property Insurance Underwriting Ass'n.*, 53 N.Y.2d 835, 836, 440 N.Y.S.2d 174 (N.Y. 1981); *Mosley v. Allstate Insurance Co.*, 165 Or.App. 304, 312, 996 P.2d 513, 517 (2000).
- ¹⁵ *Ward v. Custom Glass & Frame, Inc.*, 105 Oh.App.3d 131, 134, 663 N.E.2d 734, 736 (1995).
- ¹⁶ *Porsmouth Hospital v. Indemnity Insurance Co. of North America*, 109 N.H. 53, 58, 242 A.2d 398, 401 (1968).
- ¹⁷ *Thrasher v. United States Liability Insurance Co.*, 19 N.Y.2d 159, 278 N.Y.S.2d 793 (N.Y. 1967).
- ¹⁸ *Id.*
- ¹⁹ *City of New York*, *supra* note 8.
- ²⁰ *Id.*
- ²¹ *Dyno-Bite, Inc. v. Travelers Cos.*, 80 A.D.2d 471, 476, 439 N.Y.S.2d 558, 561 (N.Y. App. Div. 1981).
- ²² *Mount Vernon Fire Insurance Co. v. 170 East 106th Street Realty Corp.*, 212 A.D.2d 419, 420, 622 N.Y.S.2d 758 (N.Y. App. Div. 1995).
- ²³ *Empire Mutual Insurance Co. v. Boston Old Colony Insurance*, 36 N.Y.2d 719, 722, 367 N.Y.S.2d 972 (N.Y. 1975).
- ²⁴ *Id.* at 722.
- ²⁵ *Struve*, *supra* note 4.
- ²⁶ See, e.g., *American Fire and Casualty Co. v. Collura*, 163 So.2d 784, 793 (Fl.App. 1964); *Mutual of Enumclaw Insurance Co. v. T&G. Construction, Inc.*, 165 Wash.2d 255, 269, 199 P.3d 376, 383 (2008); *Kearns v. Interlex Insurance Co.*, 231 S.W.3d 325, 331 (Mo. Ct. App. 2007); *Coastal Refining & Marketing, Inc. v. U.S. Fidelity and Guaranty Co.*, 218 S.W.3d 279, 298 (Tex. App. 2007); *American Int'l Specialty Lines Insurance Co.*, *supra* note 9; *Grace v. Insurance Co. of North America*, 944 P.2d 460, 464 (Alaska 1997); *Smith*, *supra* note 9 at 362; *O'Neill v. Long*, 54 P.3d 109, 116 (Okla. 2002); *Allstate Insurance Co. v. State Farm Mutual Auto. Insurance Co.*, 363 Md. 106, 122, 767 A.2d 831 (2001); *Parr v. Gonzalez*, 669 N.W.2d 401, 408 (Minn. Ct. App. 2003); *Northwest Prosthetic & Orthotic Clinic, Inc. v. Centennial Insurance Co.*, 100 Wash.App. 546, 550, 997 P.2d 972, 974 (2000); *Ahmadi v. Allstate Insurance Co.*, 22 P.3d 576, 579 (Col. Ct. App. 2001).
- ²⁷ *Prince George's County v. Local Gov't Insurance Trust*, 159 Md.App. 471, 484, 859 A.2d 353, 361 (2004).
- ²⁸ *Northwest Prosthetic & Orthotic Clinic, Inc.*, *supra* note 26.
- ²⁹ *Smith*, *supra* note 9 at 364.
- ³⁰ *New York Central Mutual Fire Insurance Co.*, *supra*, note 14 at 316-17.
- ³¹ *Allstate Insurance Co. v. Loester*, 177 Misc.2d 372, 374, 675 N.Y.S.2d 832, 834 (Sup.Ct. 1998).
- ³² *Id.*
- ³³ *American Guarantee and Liability Insurance Co. v. Chandler Mfg. Co., Inc.*, 467 N.W.2d 226, 229 (La. 1991).
- ³⁴ *New York City Housing Authority v. Housing Authority Risk Retention Group, Inc.*, 203 F.3d 145, 151-52 (2nd Cir. 2000); *Loester*, *supra* note 31 at 375.
- ³⁵ *New York City Housing Authority*, *supra*, n. 34 at 152.
- ³⁶ *New York Central Mutual Fire Insurance Co. v. Rafailova*, 41 A.D.3d 603, 604, 840 N.Y.S.2d 358, 360 (App.Div. 2007).
- ³⁷ *Pilgrim*, *supra* note 9.
- ³⁸ *Collura*, *supra* note 26 at 788 (Fla. App. 1964).
- ³⁹ *Id.*
- ⁴⁰ *Rajchandra Corporation v. Title Guaranty Co.*, 163 A.D.2d 765, 769, 558 N.Y.S.2d 1001, 1005 (N.Y. App. Div. 1990); but see *Simpson v. U.S. Fidelity & Guaranty Co.*, 562 N.W.2d 627, 632 (La. 1997).
- ⁴¹ *MetLife Auto*, *supra* note 10 at 589.
- ⁴² *Rajchandra Corporation*, *supra* note 40.
- ⁴³ *Loester*, *supra* note 31 at 374.
- ⁴⁴ *State Farm Fire & Casualty Co. v. Imeri*, 182 A.D.2d 683, 684, 582 N.Y.S.2d 463, 465 (N.Y. App. Div. 1992).
- ⁴⁵ *State Farm Indemnity Co. v. Moore*, 58 A.D.3d 429, 430, 872 N.Y.S.2d 82, 83 (N.Y. App. Div. 2009).
- ⁴⁶ *New York City Housing Authority*, *supra*, note 34 at 152.
- ⁴⁷ *Loester*, *supra* note 31 at 375.
- ⁴⁸ *Evans*, *supra* note 9 at 694.
- ⁴⁹ *Weissberg*, *supra*, note 7.
- ⁵⁰ *Id.*; *Evans*, *supra*, note 9; *Pilgrim*, *supra* note 9.
- ⁵¹ *Pilgrim*, *supra* note 9 at 721-22.
- ⁵² *Evans*, *supra*, note 9.
- ⁵³ *Abudayeh v. Fair Plan Insurance Co.*, 105 A.D.2d 764, 766, 481 N.Y.S.2d 711, 714 (N.Y. App. Div. 1984).

⁵⁴ *Coastal Refining & Marketing, Inc.*, *supra* note 26.

⁵⁵ *Marley v. Bankers Indemnity Insurance Co.*, 53 R.I. 289, 166 A. 350, 351 (1933).

⁵⁶ *Allstate Insurance Co. v. Gardaner*, 52 A.D.3d 599, 859 N.Y.S.2d 741 (N.Y. App. Div. 2008).

⁵⁷ *Dyno-Byte, Inc.*, *supra* note 21 at 475.

⁵⁸ *Scott Technologies, Inc. v. Reliance Insurance Co. of Illinois*, 746 So.2d 1136, 1137 (Fla. Dist. Ct. App. 2000).

⁵⁹ *Nelson Electrical Contracting Corp. v. Transcontinental Insurance Co.*, 231 A.D.2d 207, 210, 660 N.Y.S.2d 220, 222 (N.Y. App. Div. 1997).

⁶⁰ *New Jersey Eye Center, P.A. v. Princeton Insurance Co.*, 394 N.J.Super. 557, 570, 928 A.2d 25, 33 (N.J. Super. Ct. App. Div. 2007).

⁶¹ *Grace v. Insurance Co. of North America*, *supra* note 26; *Smith v. Progressive Casualty Insurance Co.*, 61 S.W.3d 280, 283 (Mo.App. 2001).

⁶² *Hager v. Gonsalves*, 398 N.J.Super. 529, 536, 942 A.2d 160, 164 (N.J. Sup. Ct. App. Div. 2008).

⁶³ *Kransco v. American Empire Surplus Lines Insurance Co.*, 23 Cal.4th 390, 410, 2 P.3d 1, 15, 97 Cal.Rptr.2d 151, 166 (2000).

⁶⁴ *Secrist*, *supra* note 3..

⁶⁵ *Belz v. Clarendon America Insurance Co.*, 158 Cal.App.4th 615, 628-29, 69 Cal.Rptr.3d 864, 872 (2008).

⁶⁶ *Mutual of Enumclaw Insurance Co.*, *supra* note 26.