

Indiana Court Of Appeals Opinion Supports Recovery Of Expenses Incurred By Policyholder In Assisting Carrier In Defending An Insured Lawsuit

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Defending a lawsuit can be a costly and time-consuming affair for a company, even when its liability carrier is providing and paying for a complete defense. The company's obligation to cooperate with its carrier in the defense of the suit may include devoting significant employee time and company resources to gathering documents, assisting in discovery responses and preparing and appearing for depositions and trial. A recent Indiana Court of Appeals opinion suggests that under certain policy language and in certain circumstances, companies may be entitled to reimbursement from their carriers for the cost of cooperating with these defense-related requests. In *T.R. Bulger, Inc., et al. v. Indiana Ins. Co.*, Case No. 46A03-1405-PL-188 (Ind. Ct. App. Mar. 9, 2015), the policyholder, an HVAC company, was sued by a customer. The policyholder tendered the suit to its comprehensive contractors policy carrier, which agreed to defend and appointed counsel to defend the policyholder in the suit. In the course of defending the policyholder, the carrier-appointed counsel requested information and materials from the policyholder, which recorded the time its employees spent complying with these requests. In all, the policyholder claimed it incurred expenses of almost \$65,000 in assisting in the defense of the suit and sought to recover this amount from its carrier. The basis for the policyholder's claim was the carrier's promise to make "supplementary payments" to the policyholder, including "[a]ll reasonable expenses incurred by the insured at [the carrier's] request to assist [the carrier] in the investigation or defense of the [suit]" The court observed that this language established two criteria for recovery of such expenses: (1) they must be incurred at the carrier's request; and (2) they must be reasonable. As to the first criterion, the court followed the approach previously adopted by a New York court, holding that expenses a policyholder incurs in assisting carrier-appointed defense counsel are incurred at the carrier's request. As to the second criterion, the court did not decide the reasonableness of the claimed expenses, but did offer some guidance on the issue. First, the nature of the time spent by employees assisting in the defense must be identified with specificity. Second, employee time should be reimbursed at the rate the policyholder pays the employee, not the rate at which the policyholder bills the employee's time to clients or customers. While the opinion is a memorandum decision with limited precedential value, it nonetheless provides a roadmap for policyholders, in Indiana and elsewhere, to advocate for a right to recover expenses they incur in assisting carrier-appointed defense counsel in the defense of suits against them, so long as the time and expense are identified with sufficient specificity.

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