

Actual Notice of a Claim Triggers the Duty to Defend Even if the Insured Does Not Expressly Tender Its Defense

October 1999

An Illinois intermediate court has held that actual notice of a claim to an insurer triggered the duty to defend even if the insured did not tender its defense. *Dearborn Ins. Co. v. International Surplus Lines Ins. Co.*, No. 1-97-0724, 1999 Ill. App. LEXIS 667 (Ill. Ct. App. Sept. 23, 1999).

Dearborn Insurance Company ("Dearborn") and International Surplus Lines Insurance Company ("International") each issued a claims-made insurance agents and brokers liability policy covering Canon Insurance Service ("Canon"). When a former client sued Canon, the insured asked Dearborn to provide its defense. It also placed International on notice, but noted that it had asked Dearborn to assume the defense. The letter concluded, "[I]t's probably best that you accept this as a possible claim but not something in which you need to take an active role unless, of course, your claims people disagree." After providing a defense, Dearborn sought contribution from International.

International claimed that Canon had not tendered its defense or had intentionally forgone a defense from International. The Court disagreed, noting that Canon provided International with notice of the claim. According to the Court, under *Cincinnati Cos. v. West American Ins. Co.*, 701 N.E.2d 499 (Ill. 1998), an insurer receiving actual notice of a claim must defend unless the insured knowingly forgoes the insurer's assistance. In this case, the Court found that the notice letter fell short of "specific direction not to defend the case."