

Insurer Entitled to 70% Reduction in Legal Fees Incurred by Insured

July 2007

The United States District Court for the Southern District of New York, applying New York law, has held that legal fees incurred by an insured in defense of an underlying claim were excessive. *Indotronix Int'l Corp. v. Twin City Fire Ins. Co.*, No. 7:06-cv-02688 (S.D.N.Y. May 1, 2007).

In a previous decision, the court held that the insurer had a duty to defend the policyholder in connection with two successive suits that asserted claims for fraudulent conveyance. The first lawsuit was filed in federal court in the Southern District of New York and was dismissed for lack of standing, as the proper party to assert such claims was the chapter 7 trustee of the policyholder. The same attorney thereafter represented the chapter 7 trustee in an action before the bankruptcy court that was based on essentially the same allegations. That suit, however, also was dismissed for lack of standing.

The court held that the legal fees incurred by the policyholder in defense of the actions were excessive and unreasonable. The court noted that the attorney handling the case for the policyholder thought that it was "obvious" that the plaintiff lacked standing, but nevertheless wanted to "know everything . . . about the case" The court stated that some work on the merits was justified while the motions to dismiss were pending, but concluded that "[f]ar too much work was done at too great a cost to be visited upon the insurer simply in the name of being prepared for an unexpected denial of the motions."

The court held that, where the policy leaves the selection of counsel to the policyholder, the fee paid must be that of a "reasonable, paying client, who wishes to pay the least amount necessary to litigate the case effectively." The court noted that the blended rate of \$358 per hour, while perhaps reasonable in Manhattan, was excessive in the legal market where the case was litigated (White Plains, NY). According to the court, a blended rate of \$300 per hour was reasonable in that legal market. The court also took exception to the fact that the policyholder continued to bill substantial time after the first suit had been dismissed but before the second suit had been filed. The court noted that the research issues could have been "easily researched, especially by an attorney having access to management, and should not have required a great investment of time," and much of the "work could have been done at lesser cost using a forensic accountant" and reduced the time billed accordingly. With the reduction in the blended rate and the reduced hours, the bill for legal fees ultimately was reduced by nearly 70 percent.