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ALERT

Court Finds That "Defense Costs" Include In-House Legal Costs

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An Oregon federal trial court has held that in-house litigation counsel's salary constitutes "defense costs" recoverable under an insurance policy that did not define the term. *City of Portland v. Ins. Co. of the State of Pennsylvania*, 2013 WL 5524125 (D. Or. Sept. 30, 2013).

The relevant policy did not define the term "defense costs." The policyholder municipality claimed coverage for fees incurred by its in-house trial counsel with respect to certain litigation. The carrier disputed coverage, arguing that the term "defense costs" applied only to amounts paid to outside counsel.

Applying Oregon law, the court examined the term "defense costs" in context to determine its meaning. The policy used the term several times, including a provision that described exhaustion of a retention "by payment to a third party of judgments, settlements, or defense costs." The court reasoned that by specifying that only defense costs paid to a third party could exhaust the retention, but not so specifying in other parts of the policy, the policy implicitly recognized that the term "defense costs" without the "paid to a third party" qualifier would encompass in-house counsel acting as trial counsel.

The court further reasoned that the carrier could have specified that defense costs do not include in-house trial counsel. Accordingly, the court ruled in favor of the policyholder.

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