

Appellate Court Finds the Word “Claim” Ambiguous in Policy Requiring Payment of a “Per Claim Self-Insured Retention”

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Insurance coverage lawsuits often involve disputes over whether an insurance policy is wrapped in “plain meaning” that can be discerned from its “four corners,” or whether it contains “ambiguities” that need to be analyzed and explained. More than 40 years ago, the California Supreme Court in *Pacific Gas & Elec. Co. v. G.W. Thomas Drayage and Rigging Co., Inc.* adopted a broad view to determine whether a contract provision truly has a “plain meaning.”¹ Because a word does not have “an objective meaning, [or] one true meaning,” the court concluded that “the meaning of a writing . . . can only be found by interpretation in the light of all the circumstances that reveal the sense in which the writer used the words.”² A court interpreting a contract must therefore “place itself in the same situation in which the parties found themselves at the time of contracting.”³

This principle was illustrated recently in *Clarendon National Ins. Co. v. North American Capacity Ins. Co.*⁴ At issue in this dispute between two insurance companies was the meaning of the word “claim” in an insurance policy under which the policyholder had agreed to absorb the first \$25,000 of loss incurred on each “claim.” The owners of 43 homes in a housing development filed a lawsuit against a developer seeking recovery for construction defects.

The two companies that insured the developer agreed that the defects at eight of the 43 homes were potentially covered under a policy issued by North American Capacity Insurance Company (NAC). NAC asserted, however, that it did not need to defend the lawsuit until the insured spent \$200,000 (eight times \$25,000) of its own money defending and settling the eight “claims” in the lawsuit. It pointed to an endorsement in its policy that said: “Per Claim Self-Insured Retention: \$25,000 Per Claim.” That provision also stated that it applied to “each and every claim made against any insured . . . regardless of how many claims arise from a single ‘occurrence’ or are combined in a single ‘suit.’” (emphasis in original). NAC thus asserted that the words “claim” and “suit” were synonymous in the policy and that eight separate “per claim” retentions need to be paid by the policyholder before it became involved in the lawsuit.

¹ *Pacific Gas & Elec. Co. v. G.W. Thomas Drayage and Rigging Co., Inc.*, 69 Cal. 2d 33 (1968).

² *Id.* at 38–39.

³ *Id.* at 40.

⁴ *Clarendon National Ins. Co. v. North American Capacity Ins. Co.*, 2010 WL 2377835 (Cal. App. 4th, June 15, 2010).

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