

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
CENTRAL**

**MINUTE ORDER**

DATE: 10/12/2018

TIME: 08:30:00 AM

DEPT: C-65

JUDICIAL OFFICER PRESIDING: Joan M. Lewis

CLERK: Lori Urie

REPORTER/ERM: Gidgette Nieves CSR# 10142

BAILIFF/COURT ATTENDANT: J. Arnold

CASE NO: **37-2017-00038579-CU-IC-CTL** CASE INIT.DATE: 10/16/2017

CASE TITLE: **Travelers Commercial Insurance Company vs State Farm General Insurance Company [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Insurance Coverage

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**EVENT TYPE:** Summary Judgment / Summary Adjudication (Civil)

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**APPEARANCES**

Agatha Akers, specially appearing for counsel WILLIAM R LOWE, present for Defendant, Cross - Complainant(s).

Sharon Huerta, specially appearing for counsel Robert C Carlson, present for Cross - Defendant, Plaintiff(s).

Attorney Scott Davis is also appearing for plaintiff.

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The Court hears oral argument and CONFIRMS the tentative ruling as follows:

**Ruling on Travelers' Motion for Summary Adjudication**

This case concerns a dispute between two insurance companies over their obligations, if any, to their common insured, [REDACTED]

The following facts are undisputed: Travelers issued consecutive, annual homeowners policies to [REDACTED] (and her husband) for the residence located at [REDACTED] San Diego from April 12, 2007 until July 29, 2014. (See Travelers' Separate Statement of Undisputed Material Facts ("SSUMF") No. 1 and State Farm's response thereto.) On June 12, 2014, State Farm issued a homeowners policy to Pallas-Sprague. (*Id.* at SSUMF No. 2.) The State Farm policy was renewed annually and remains in effect through June 12, 2019. (*Id.* at SSUMF No. 3.)

On February 2, 2016, [REDACTED] was named a defendant in a complaint brought by her neighbors, [REDACTED] for damage they claimed to have incurred due to a tree on [REDACTED] property.

(Travelers' Ex. 5, SF0083-SF0094.) Notwithstanding early suggestions from State Farm adjusters that the [REDACTED] claim would potentially be covered under the State Farm policy, State Farm ultimately denied coverage. Travelers defended [REDACTED] in the *Hanna* action and settled the matter on her behalf without contribution from State Farm or any other carrier. (See Travelers' SSUMF No. 29 and State Farm's response thereto.)

By way of this motion, Travelers seeks summary adjudication of its first cause of action for declaratory relief and, specifically, its claim that State Farm shared in a duty to defend the case brought against [REDACTED] by the Hannas. Travelers does not deny that it, too, owed a duty to defend; rather, its argument is that State Farm also owed a duty to defend the underlying *Hanna* complaint.

The *Hanna* complaint, in part, alleged that in or about 2007, [REDACTED] had conducted an extensive remodel to her home and that the foundation of the newly constructed walls disrupted the root system of the tree. (*Hanna* complaint at Para. 7.) Within a few years of that remodel, the tree began to drop pine needles and drip significant amounts of sap onto the [REDACTED] property. (*Id.*) At Para. 8 of the *Hanna* complaint, they alleged that ". . . [i]n or about 2011, Defendant hired Homestead Tree Service to trim Defendant's TREE at Plaintiffs' request. The trimming was insufficient, and the canopy of Defendant's TREE continued to grow over Plaintiffs' Property, and the constant dripping of sap and pine needles became more severe. The roots of the TREE also began to seriously invade the Plaintiffs' Property."

Travelers submitted the declaration of Jerry D. Hemme, the attorney who represented [REDACTED] with respect to the [REDACTED] claims until counsel retained by Travelers appeared on [REDACTED] behalf. In this declaration, he states that he confirmed with the State Farm adjuster, Steven Mudd, that the damage alleged to have occurred from the Torrey Pine tree began prior to the inception of the State Farm policy but that his statement "related to damages to the [REDACTED] property generally from sap dripping, pine needles and pine cones dropping, and root damage to sidewalk at the front of the property, which mostly caused damage in front of my clients' property but may have impacted the [REDACTED] property as well." But, he adds, "I recall the [REDACTED] also claimed that the roots from the tree caused damage to the interior of their home, which was a new claim. I had no knowledge as to when the alleged interior damage had first occurred or manifested itself." (Hemme declaration at Para 8.)

State Farm's position in arguing that it owed no duty to defend is that there was a single occurrence: "In the present case, there was only a single cause of the [REDACTED] damages from the standpoint of [REDACTED] namely her alleged failure to control the growth of the Torrey Pine tree. There was only one occurrence under the State Farm policy that first resulted in property damage before the effective date of the State Farm policy." (Opposing points and authorities, 5:13-18.)

As the Ca. Practice Guide: Insurance Litigation (The Rutter Group 2018) explains:

"[7:520] **Potential Coverage Creates Duty to Defend:** An insurer 'must defend a suit which *potentially* seeks damages within the coverage of the policy.' [*Gray v. Zurich Ins. Co.* (1966) 65 C2d 263, 275, 54 CR 104, 112 (emphasis in original); *Wausau Underwriters Ins. Co. v. Unigard Security Ins. Co.* (1998) 68 CA4th 1030, 1036, 80 CR2d 688, 691 (citing text); *North American Bldg. Maint., Inc. v. Fireman's Fund Ins. Co.* (2006) 137 CA4th 627, 640, 40 CR3d 468, 477 (citing text)].

"In other words, the duty to defend arises whenever the lawsuit against the insured seeks damages on any theory that, if proved, would be covered by the policy. Thus, a defense is excused only when "the third party complaint can *by no conceivable theory raise a single issue* which could bring it within the

policy coverage." [*Montrose Chem. Corp. of Calif. V. Sup. Ct. (Canadian Universal Ins. Co., Inc.)* (1993) 6 C4th 287, 295, 24 CR2d 467, 471 (emphasis added); *Gray v. Zurich Ins. Co., supra*, 65 C2d at 275, 54 CR at 112, fn. 15; see also *Devin v. United Services Auto. Ass'n* (1992) 6 CA4th 1149, 1157, 8 CR2d 263, 268; and *Amato v. Mercury Cas. Co.* (1993) 18 CA4th 1784, 1790, 23 CR2d 73, 76].

"[T]he insured need only show that the underlying claim *may* fall within policy coverage; the insurer must prove it *cannot*." [*Montrose Chem. Corp. of Calif. v. Sup.Ct. (Canadian Universal Ins. Co., Inc.)*, *supra*, 6 C4th at 300, 24 CR2d at 475 (emphasis in original); see *North Counties Engineering, Inc. v. State Farm Gen. Is. Co.* (2014) 224 CA4th 902, 919, 169 CR3d 726, 740 (citing text); and Para. 7:571.5]"

The Court disagrees with State Farm's position that the damages complained of in the *Hanna* case concerned one continuous occurrence. Instead, the Court agrees with Travelers' argument – with citation to relevant authority (including *Chu v. Canadian Indemnity* (1990) 224 Cal.App.3d 86 and *Pennsylvania General Ins. Co. v. American Safety Indem. Co.* (2010) 185 Cal.App.4th 1515) – that the insurer's obligation is to analyze each distinct defect and area of damage.

Although the complaint in the *Hanna* case referenced roots of the tree seriously invading the [REDACTED] property, State Farm offered nothing to demonstrate that at the time it denied coverage there was evidence that the root invasion that caused damage to the inside of the [REDACTED] home manifested itself prior to the inception of the State Farm policies. For its part, Travelers submitted a copy of an invoice showing that certain repair work to the [REDACTED] property was performed during the State Farm policy. (Travelers' Ex. 5, SF 00157.)

The Court concludes that Travelers submitted sufficient evidence (e.g., the 2015 repair invoice; declaration of Attorney Hemme) to show a potential for coverage under the State Farm policy when separate and distinct damages (damage to the [REDACTED] home caused by roots) from the earlier-occurring damages (problems with sap, pine needles and the sidewalk). State Farm failed to establish that there was no potential for coverage.

The motion for summary adjudication of the first cause of action that State Farm owed a duty to defend its insured is granted.

In ruling on this motion, the Court declines to rule on Travelers' evidentiary objections to State Farm's separate statement because the objections are to argument and not evidence.

### **Ruling on State Farm's Motion for Summary Judgment**

Based on the ruling granting Travelers' motion on the duty to defend, State Farm's motion for summary judgment is denied.

The Court recommends that the parties attend a settlement conference.

Parties waive notice.



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Judge Joan M. Lewis