



Don't Accept Policy Exclusions At Face Value, Especially In California

June 1, 2018 | [Claims](#), [Indiana Insurance Coverage](#), [Insurance](#), [Policyholder Protection](#)

We've recently discussed the nuances of an insurer's continuing [duty to defend](#) under California law in a "mixed" lawsuit alleging both covered and non-covered claims after the dismissal of the covered claims. Insurers, however, sometimes try to evade their duty to defend at the outset, citing policy exclusions that appear – at first glance – to exclude coverage for what would otherwise be the one covered claim. Should you give up on coverage? We don't think so.

As a preliminary matter, under California law exclusions are strictly construed against the insurer and liberally interpreted in favor of the insured. Accordingly, if there is *any* ambiguity as to whether the exclusion applies to negate the insurer's duty to defend, California courts will construe the exclusion against the insurer and in favor of the insured under the rule that exclusionary clauses are construed narrowly against the insurer. Even if an exclusion does appear to negate an insurer's duty to defend, that exclusion may not be enforceable. For example, insurers often attempt to include exclusions that purport to allow them to deny coverage for an otherwise covered claim should a lawsuit also allege certain uncovered claims.

Essentially, exclusionary clauses such as this attempt to escape the broad scope of California's duty to defend, under which an insurer must defend an insured if the allegations create any possibility of coverage, even if there is only a single covered claim and a multitude of uncovered claims. Indeed, since an insurer's duty to defend non-covered claims is a public policy of the state of California, as opposed to an obligation imposed by the insurance policy, exclusions that purport to run afoul of such broad duty may be unenforceable.

When an insurer attempts to evade its defense obligation based on

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exclusionary language, a best practice is to carefully consider the applicability and enforceability of such purported exclusionary language and not assume that your insurer's position is correct.