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It's Not Over Until It's Over: An Insurer's Continuing Duty To Defend After The Dismissal Of Covered Claims

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Imagine this scenario: you are a California policyholder and have been sued in a lawsuit alleging one covered claim and multiple non-covered claims. Your insurer, applying California insurance law, thereafter recognizes both (1) its duty to defend subject to a reservation of rights and (2) your right to independent counsel based on the nature of the reservation of rights. In the middle of the lawsuit, your defense attorney files a motion for summary adjudication that, when granted, leads to the dismissal of the one covered claim. Your insurer then threatens to stop funding the defense of the case, claiming that the dismissal of the covered claim has terminated its duty to defend.

Is your insurer right under California law? Not in our view.

Both state and federal courts in California have recognized that once an insurer's duty to defend attaches, an insurer generally has an obligation to defend an action until the action's *final* determination. The rationale, of course, is that the claimant whose covered claim has been dismissed may ultimately appeal the dismissal of the covered claim. Until and unless the lawsuit fully and finally concludes, revival of the covered claim always remains a possibility.

Accordingly, when faced with an insurer's effort to abandon your defense after dismissal of covered claims under California insurance law, a best practice is to not assume that your insurer can permissibly stop defending prior to the final conclusion of the case.

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