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## California Appellate Court Holds That Named Insured, Not An Additional Insured, Must Satisfy Conditions Under General Liability Policy's Self-Insured Retention Endorsement

In *Forecast Homes, Inc. v. Steadfast Insurance Company*, 2010 Cal. App Lexis 172, (January 12, 2010), a California appellate court held that the terms of an insurance contract's self-insured retention endorsement required that the named insured itself must satisfy the endorsement's payment provision before coverage would be triggered. Payment by an additional insured would not suffice.

### Background

Forecast Homes, Inc. ("Forecast") develops and sells single-family homes. Forecast routinely uses subcontractors in its development and construction operations. The subcontractors are required to maintain general liability insurance, naming Forecast as an additional insured under each policy.

From 2001 to 2003, five homeowners sued Forecast alleging construction defects. The suits named only Forecast and did not name the subcontractor that actually constructed the homes. However, because Forecast was named as an additional insured under the subcontractor's insurance contracts with Steadfast Insurance Company ("Steadfast"), Forecast tendered the claim to Steadfast for a defense.

The five lawsuits implicated several Steadfast insurance contracts, each of which contained a similar self-insured retention ("SIR") endorsement. One version of the SIR endorsement provided that the named insured was obligated to satisfy the contract's self-insured retention before coverage under the contract would be triggered. A later version of the SIR endorsement clarified that the named insured must pay the retention as a condition precedent to coverage.

As the party seeking coverage under its status as an additional insured, Forecast paid the self-insured retention for each of the contracts under which coverage was being sought. Steadfast, nevertheless, denied Forecast's claim on the ground that the insurance contracts clearly stated that only the named insured could satisfy payment of the SIR. Steadfast asserted that because payment had not been made by any of the named insureds and because Forecast was not a named insured, the payments did not satisfy the SIR endorsements' payment provision.

The California trial court agreed with Steadfast, noting that the insurance contracts plainly provided that only the named insured, not an additional insured, could satisfy the payment provision of the

SIR endorsements. Further, finding that the SIR endorsements were not contrary to public policy, the trial court granted Steadfast's motion for summary judgment. Forecast appealed.

### The Court's Ruling

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The California appellate court affirmed the trial court's award of summary judgment, finding that the SIR endorsements plainly and clearly provided that only the named insured could satisfy the payment provision. The court noted that under California law, a self-insured retention is the equivalent of primary liability insurance and as such, the express terms of the endorsement would determine the party that must satisfy any policy condition.

The court rejected Forecast's argument that the endorsements were ambiguous because the earlier version did not contain the clarifying language contained in the later version. Instead, the court found that there was no material difference between the two versions of the SIR endorsement and that both versions

clearly stated that the named insured must satisfy the payment provision.

Additionally, the court rejected Forecast's argument that the absence of language cautioning that an additional insured may not satisfy the payment provision rendered the endorsements ambiguous and thereby entitled Forecast to a construction in favor of coverage. The court found Forecast's argument to be illogical, stating that "[i]t does not follow that an insurer who uses specific language to designate the named insured as obligated to make the SIR payment to trigger coverage, would also list the other foreseeable payees it will *not* accept payment from."

Finally, the court rejected Forecast's claim that the SIR endorsements violated public policy by restricting the coverage available to additional insureds. In doing so, the court recognized that Steadfast and the subcontractor expressly agreed to the terms of coverage, including the SIR endorsements, and that the insurance contracts memorialized the amount of

risk Steadfast assumed under each contract. To modify the SIR endorsements, the court explained, would effectively expand coverage to include occurrences neither contemplated by the insured nor bargained for when Steadfast calculated its premium.

Accordingly, the appellate court upheld the trial court's decision in finding that only the named insured could satisfy the payment provision of the SIR endorsements.

### Implications

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Where the insured and the insurer have agreed to particular terms with respect to the payment of a self-insured retention, courts applying California law will enforce those terms. The *Forecast* decision is an example of a case in which a court enforced the terms of an unambiguous insurance contract, declining to vary such terms on the basis of extrinsic evidence or public policy, even when its decision operated to restrict coverage.

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