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The Little Provision That Could

Maximizing Your Recovery Under The “Supplementary Payments Provision” Of Your Commercial General Liability Policy

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Commercial General Liability policies generally obligate an insurance company to defend a policyholder and to pay settlements reached by or judgments entered against a policyholder. However, a policyholder who assists its insurance company in its investigation of the claim, whether by gathering documents or actively assisting its insurance company in an investigation, may be entitled to be reimbursed for the expenses that he or she incurs, even if the insurance company eventually decides that the policyholder is not entitled to coverage for the claim. That obligation to pay—and the policyholder’s right to receive payments—is found in the “supplementary payments” provision of most CGL policies.

In general, the “supplementary payments provision” requires that the insurance company pay all of the expenses that the policyholder incurs at its request to assist in the investigation or defense of a claim. An insurance company may also be required to

reimburse the policyholder for expenses that the policyholder incurs even before it requests assistance. Typically there are no limits on supplementary payments and the payments made under that provision are typically “outside”, or in addition to, the limits of the CGL insurance policy. A policyholder is entitled to receive supplementary payments even if the claim is not covered under the policy.

Insurance companies often ask their policyholders to assist in investigations of claims. Whether it is gathering documents, providing information or, as we have seen in the context of residential construction claims, assist in conducting an invasive and destructive investigation into the cause of water infiltration and extent of property damage in an entire residential development, providing this assistance can be expensive.

For example, in the residential construction industry, some builders have been faced with claims by homeowners who say that their homes have been damaged by water that has intruded through and around a stucco exterior. In some of those cases, insurance companies have asked policyholders to remove the exterior cladding so that they

can determine the cause and extent of the property damage. The question then becomes – who pays to remove and replace the exterior cladding? If the policyholder removed the exterior cladding at the insurance company’s request, then those costs should be paid by the insurance company as a supplementary payment.

There are certain steps that we recommend that policyholders take to help make sure that they are fully reimbursed for expenses that they incur at the insurance company’s request.

First, the policyholder should ask that the insurance company confirm, in writing, what the policyholder is being asked to do. Second, the policyholder should then confirm, in writing, that it will be reimbursed for the costs that it incurs to



carry out the insurance company’s request. Finally, the policyholder should carefully document its expenses and submit those expenses to the insurance company. By taking these steps, a policyholder will place itself in the best position possible to submit a claim for reimbursement under this standard, yet often overlooked, supplementary payment provision. ♦