

California Court of Appeal Rules That Insurer For Design Defendant In Large-Scale Wrongful Death Case May Be Brought In As A Cross-Defendant Based Upon An Indemnity Claim

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Very often, in large-scale injury and wrongful death cases, public entities as well as large commercial entities will pursue, via Cross-Complaint and tenders of defense, various subconsultants hired by those entities that could be potentially responsible in part for the injury and/or death claims. Insofar as the insurer or insurers of the consultant, it has generally been the practice that, where there is a claim against an insurer for failing to provide a defense as an additional insured, a separate insurance coverage action may be filed against the insurer of the subconsultant. However, in a decision published on March 25, 2026, the California Court of Appeal, Fourth Appellate District, ruled that a party in that party seeking indemnity can file a Cross-Complaint against the insurer for the consultant in the same (underlying) action.

The Opinion was published in the case of City of Riverside v. RLI Insurance Company (2026) Lexis 180562 ("City of Riverside case").

In the City of Riverside case, a lawsuit was filed arising from a tragic accident in which pedestrian Ferial Harb was struck by a vehicle while walking on or near a roadway in Riverside County. Harb died from his injuries. The Harb family filed a lawsuit against the City of Riverside, the County of Riverside, the State of California, the driver that ran over Harb, and the owner of the vehicle which caused Harb's death. The City of Riverside ("City") answered the Harb Complaint with a general denial and asserted numerous defenses. The City then filed a Cross-Complaint against numerous third-party contractors and consultants, including Design Services, Inc. ("DSI"), as well as an arborist, a landscape design contractor, and their respective insurance companies, including DSI's insurer, RLI Insurance Company ("RLI"). The City included Causes of Action for Indemnification, Apportionment of Fault, Declaratory Relief, Breach of Contract, and Insurance Bad Faith in its Cross-Complaint.

By way of its Cross-Complaint, the City alleged it had entered an agreement with DSI by which DSI agreed to provide professional consulting services for a citywide LED streetlight conversion project. The DSI contract required DSI to evaluate the street lighting, including on the street where the accident occurred, and provide professional services related to lighting. In regard to RLI, the insurer for DSI, the City alleged that its agreement with DSI "required DSI to obtain insurance policies to protect the City against claims arising out of DSI's work, including their negligence," and that RLI—DSI's insurer—agreed to

name the City as an additional insured. Certificates of Insurance were provided, indicating the City's status as an additional insured on the DSI's insurance policies.

RLI filed a demurrer to the City's Cross-Complaint. RLI asserted that it was improperly joined as a liability insurer for Cross-Defendant DSI. RLI argued that, under California law, the appropriate course of action was for the City to file a separate coverage action. The RLI counsel argued the application of Moradi-Shalal v. Fireman's Fund Ins. Companies (1988) 46 Cal.3d 287 where the California Supreme Court, in reconsidering its decision Royal Globe Ins. Co. v. Superior Court (1979) 23 Cal.3d 880, ruled that there was no private right of action based on the Insurance Code against third parties. The counsel for RLI also argued that to bring it in as a Cross-Defendant would be unduly prejudicial.

The trial court sustained the Demurrer without leave to amend. The trial court largely based its holding on the decision in Moradi-Shalal.

On appeal, California Court of Appeal, Fourth District, ruled that, because the City asserted that it entered into contract with DSI, that it required DSI to obtain insurance policies to protect the City against claims arising out of DSI's work, and an endorsement including the City as an additional insured on the DSI policy, the City's claims arose in contract not tort, and that, pursuant to the more recent decision in Royal Surplus Lines Insurance Co. v. Ranger Insurance Co (2002) 100 Cal.App.4th 193, the Cross-Complaint could stand.

The City of Riverside case could have far-reaching implications, and in particular for large-scale wrongful death and personal injury actions where design professionals, under contract with either large entities or public entities, have, by contract, agreed to name the party seeking indemnity as an additional insured under their professional liability policies.

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