John T. Callahan & Sons, Inc. v. Worcester Insurance Company

SERVICES
Construction Litigation

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Aaron R. White

Attorney Aaron White represented a general contractor and its general liability insurer in a declaratory judgment action against a subcontractor's general liability insurer, seeking declaratory relief concerning the subcontractor's insurer's duty to defend and indemnify the general contractor in underlying negligence suit brought by a worker severely injured in a construction site accident.

Attorney White successfully argued in a motion for summary judgment that the "Other Insurance" clauses of the general contractor's insurer's general liability insurance policy and the subcontractor's insurer's general liability insurance policy were mutually repugnant. The Superior Court Department, Middlesex County, granted the motion for summary judgment ruling that the subcontractor's insurer was obligated to contribute a pro-rata share to defend and indemnify its insured. The general contractor and its insurer next filed a motion seeking recovery of the declaratory judgment attorney fees and costs incurred to successfully establish the insurer's duty to defend. The trial court denied the motion seeking attorney fees, and the general contractor and its insurer appealed.

The Massachusetts Supreme Judicial Court transferred the case sua sponte and heard oral argument. The court issued the decision referenced above on March 19, 2009 affirming the trial court ruling and denying the general contractor and its insurer any recovery of attorney fees or costs after successfully establishing the subcontractor's insurer's duty to defend and indemnify.

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