

**California Court Holds Insurer Entitled to Reimbursement of Defense Costs**  
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In its recent decision in *Great Am. Ins. Co. v. Chang*, 2013 U.S. Dist. LEXIS 159197 (N.D. Cal. Nov. 6, 2013), the United States District Court for the Northern District of California had occasion to consider an insurer's right to reimbursement of defense costs advanced to its insured for noncovered claims.

Great American insured Michael Chang under a series of general liability policies for his operation of a dry cleaner from 1977 through 1983. Chang later sold the property to a third party and the property was converted to a restaurant. That third party later brought suit against Chang when cleaning solvents were discovered on the property. Great American agreed to prove Chang with a defense in the underlying suit, subject to a reservation of rights, including its right to seek reimbursement of defense costs associated with noncovered claims. Great American ultimately paid \$692,416 in defending the underlying suit, plus an additional \$121,259 to perform a site investigation. Great American also paid \$70,426 in costs associated with defending Chang in connection with litigation with the California Regional Water Quality Control Board over whether the site remediation costs should be funded by California's Underground Tank Storage Fund. These legal fees were shared, in part, by Chang's other insurers – Fireman's Fund and Farmers – both of whom advanced defense costs pursuant to a reservation of rights.

Great American and Chang subsequently engaged in coverage litigation, and the court granted summary judgment in Great American's favor as to its duty to defend and indemnify. As a result of this decision, Great American moved for summary judgment on its right to reimbursement of the \$884,000 in defense costs it advanced to its insured.

Chang argued that Great American was not entitled to reimbursement of defense costs because its policies contained no language to this effect. Chang argued in the alternative that Great American should be required to seek reimbursement of defense costs from Fireman's Fund and Farmers. Citing to *Buss v. Superior Court*, 939 P.2d 766 (Cal. 1997), the court rejected Chang's first argument, observing that California law permits reimbursement of defense costs following a determination of noncoverage regardless of express policy language. With respect to the second argument, the court noted that because Farmer's and Firmeman's Fund both had reserved rights, thus raising a question as to whether they ultimately had a duty to defend, Great American was entitled to recover directly from Chang. As the court explained, "Great American should not have to seek reimbursement from third-party insurers, and potentially file another coverage action against those insurers, to recover costs that it advanced to the Changs." Thus, the court held that Great American was entitled to reimbursement of all defense costs plus prejudgment interest running from the date such amounts were paid.