

**Ameron Case Summary—Expanding the Definition of “Suit”**  
*Ameron International Corporation v. Insurance Company of the State of Pennsylvania,*  
*et al.* (2010) 50 Cal. 4<sup>th</sup> 1370

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The Board of Directors is sometimes faced with a challenging question—does the association’s insurance company have a duty to defend the association or provide insurance coverage in a particular situation? The answer is often unclear, particularly when terms are left undefined in the association’s insurance policy. In the recently-decided Ameron case, the California Supreme Court provides guidance on this issue.

Factual Background & Proceedings

Beginning in 1975, the United States Department of the Interior, Bureau of Reclamation (“Bureau”) contracted with Peter Kiewit Sons’ Company (“Kiewit”) for the fabrication and installation of concrete siphons used in the Bureau’s Central Arizona Project aqueduct. Kiewit then subcontracted manufacture of the siphons to Ameron International Corporation (“Ameron”), requiring it to defend and indemnify Kiewit in the event the siphons proved defective.

In 1990, the Bureau discovered defects in the siphons that required their replacement at a cost of approximately \$116 million. In 1995, the Bureau’s contracting officer issued two final decisions finding Kiewit responsible for the siphons’ defects and seeking almost \$40 million in damages from Kiewit and Ameron. Kiewit and Ameron challenged the contracting officer’s decision before the United States Department of Interior Board of Contract Appeals (“IBCA”). Ameron provided timely notice to its insurers.

The IBCA administrative law proceeding lasted 22 days and concluded when Ameron and Kiewit settled the Bureau’s claims against them for \$10 million. Following the settlement, the majority of Ameron’s insurers generally failed or refused to pay for the cost of defending or indemnifying Ameron in the litigation before the IBCA.

In 2004, Ameron, for itself and as the assignee of Kiewit’s rights, filed a complaint against its insurance providers, alleging causes of action for breach of contract, breach

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of the covenant of good faith and fair dealing, declaratory relief, waiver and estoppel, and contribution. Ameron claimed that the insurance companies failed or refused to defend or settle the Bureau's claims against it before the IBCA, failed to indemnify it for the IBCA settlement, and neglected to investigate the potential for coverage.

The trial court granted the demurrers of the insurance companies and dismissed Ameron's complaint. The trial court held that the IBCA proceeding was not a "suit" that would trigger an insurance company's duty to defend its insured or provide insurance coverage. The Court of Appeal reversed in part and held that the insured could recover under certain comprehensive general liability policies that defined a suit as a civil proceeding. The California Supreme Court granted review.

### Supreme Court Observations & Conclusions

The Supreme Court observed that case law interpreting comprehensive general liability policies has defined a suit, absent a definition of the term in the policy, as a proceeding brought in a court of law by the filing of a complaint. Applying contract interpretation rules to determine the parties' intent and to resolve ambiguity, the Supreme Court concluded that because the Contract Disputes Act describes an adjudicative proceeding as a "suit" and characterizes of the initial pleading as a "complaint," the parties to an insurance contract would have reasonably intended that such a proceeding was a suit, thus triggering the defense and indemnity provisions in the insurance policies.

Community associations should be aware of the implications of the Ameron case. If a community association's insurance policy does not define "suit", there is a compelling argument that any administrative proceeding may trigger defense and indemnity obligations of the association's insurer. This may result in the association's insurance carrier having to provide legal counsel and/or pay for defense of the action.