

Analyzing an Insured's "Reasonable Expectation of Coverage"

April, 2016

My four-year-old son thinks he is Batman. He has both the mask and the Christian Bale dark and brooding attitude when he is in character. He recently climbed on top of a stool and announced that he was going to jump off and fly across the room. Maybe it wasn't the best parenting to let him do it, but I figured the stool wasn't that tall, the landing zone wasn't that hard, and learning that he doesn't always get what he expects wasn't that bad of a lesson.

A similar lesson was handed out by the Ninth Circuit Court of Appeals in a case titled *RTR Builders Inc. v. Savard*. The court opinion is fairly brief, with the focus of the analysis on the duty to defend and duty to indemnify. In short, the Ninth Circuit affirmed a summary judgment decision that held an insured general contractor's refusal to complete a home construction project, which allegedly led to water damage, does not constitute an "occurrence" under a commercial general liability policy.

What captured my attention was the brief discussion of the insured's argument that the general contractor had "a reasonable expectation of coverage" because the insurance company knew what kind of work the contractor performed. The insured argued that the insurance company could infer the insured expected coverage for its work, and as a result the insurance company "created an impression of coverage by not informing [the insured] that its work was not covered."

The Ninth Circuit's opinion summarily rejected the insured's "reasonable expectations" argument, but it is an approach to coverage that insurance companies will likely continue to confront. Generally, the test stated in cases is whether the objectively reasonable average policyholder would hold a given expectation regarding coverage. Some states within the Ninth Circuit apply the "reasonable expectations" doctrine in various forms for resolving unclear policy provisions. To determine whether policyholder expectations will be a large interpretative factor in a given case, the state law that applies to the coverage dispute should be analyzed.