

Breaching the Duty to Defend: Remedy for Recovering Peace of Mind

An article posted on the website of Neal, Gerber & Eisenberg discusses the adoption of the estoppel principle as a remedy for policyholders who have been wrongfully denied a defense by their liability insurers, as covered in the American Law Institute's Preliminary Draft No. 1 of the Restatement on Liability Insurance.

"The rule that the duty to defend is triggered by unproven allegations, referred to as the 'potentiality standard,' recognizes the reality that the insured has no control over how the allegations are plead in liability matters," writes Jill Berkeley.

"Estoppel, or forfeiture of defenses against coverage, in the end, is the penalty for a wrongful breach of the duty to defend. If there were no estoppel or additional risk to the insurer, there would be no downside to the insurer for wrongfully denying the policyholder the benefit of its bargain," she writes.

Read the article.