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Insured May Settle Claim Before Suit if Insurer Wrongfully Denies Coverage

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In [*Selective Ins. Co. v. Cherrytree Cos.*](#), 2013 IL App (3) 120959, the Illinois Appellate Court for the Third District drove the final nail in the insurer's **"if there is no duty to defend, there is no duty to indemnify"** coffin. Holding that an insured had the right to settle a claim for defective construction after the insurer wrongfully denied coverage, the court reaffirmed its previous ruling that *Zurich Ins. Co. v. Carus Corp.*, 293 Ill. App. 3d 906 (1997) misstated and misconstrued the law when it held that "when there is no duty to defend, there will be no duty to indemnify." The court explicitly ruled that a standard general liability policy does not require the filing of a "suit" before the insured is entitled to seek indemnification for damages it is legally obligated to pay to a third party.

Not only does the majority opinion bring a smile to my lips, but the dissent by Justice Schmidt articulates one of my other favorite rules that "whereas here, the insurer denies coverage, the insured is entitled to do what he or she can to cut his or her losses, and need not wait until suit is filed to once again make demand on the insurer." Hooray, sanity reigns in the Third District.

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