

Coverage Team Obtains Summary Judgment Based on Employer's Liability Exclusion

6.13.17

In *National Fire Insurance Company v. Burns & Scalo Roofing Company*, No. 15-6028, 2017 U.S. Dist. LEXIS 11061 (E.D.Pa., Jan. 26, 2017), the United States District Court for the Eastern District of Pennsylvania granted summary judgment in favor of the firm's insurance carrier clients based on the Employer's Liability Exclusion in their policies, which the court held barred coverage with respect to an underlying asbestos bodily injury claim brought by the insured's former employee.

In ruling in favor of the insurers, the district court applied Pennsylvania's "four corners" rule, under which an insurer's obligation to defend is determined solely by comparing the allegations of the underlying complaint to the policy to see if the complaint alleges an injury "which may be within the scope of the policy." The court pointed to allegations in both the underlying complaint and Master Long Form Complaint that "clearly and unmistakably indicate that the [underlying claimant's] cause of action arose out of the exposure to asbestos during the course of [his] employment with [the insured]." The court also observed that the "state court complaint has the hallmarks of an action asserted by an employee against his employer for an occupational disease as described in *Tooey*," in which it noted that "the Pennsylvania Supreme Court held that *employees* could pursue common law causes of action against their employers for injuries relating to occupational disease manifesting more than 300 weeks after the last occupational exposure." (Emphasis added.) Based on these allegations, the court held that it was "patently clear that the allegations in the underlying state court complaint fall within the [Employers Liability Exclusion] and, therefore, outside the scope of any insurance coverage."

The district court rejected the insured's urging "to consider a wide array of extrinsic evidence ... to conclude that [the underlying claimant] was an independent contractor or subcontractor." Rather, the court, citing the Pennsylvania Supreme Court's decision in *Kvaerner*, recognized that "Pennsylvania law is clear that [an insurer's] duty to defend a suit must be determined solely by the four corners of the underlying complaint." The court further held that, under long-standing Pennsylvania law, an insurer has no duty to indemnify if it has no duty to defend. As a result, the court held that the insurers had no duty to defend or indemnify the insured in connection with the underlying asbestos suit.

White and Williams lawyers Patti Santelle, Shane Heskin and Craig O'Neill represented National Fire Insurance Company of Hartford and Transportation Insurance Company in this case.