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Summary of Fed. Ins. Co., v. Am. Hardware Mut. Ins. Co., Nev. Adv. Op. No. 31

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Fed. Ins. Co., v. Am. Hardware Mut. Ins. Co., Nev. Adv. Op. No. 31, (May 29, 2008).¹

INSURANCE LAW – ADDITIONAL INSURED ENDORSEMENT

Summary

The Court answered a certified question under NRAP 5. The question was “whether, under Nevada law, an additional insured endorsement provides coverage for an injury caused by the sole independent negligence of the additional named insured.”²

Disposition/Outcome

Yes, unless there is “specific language excluding or limiting coverage for injuries caused by the additional insured’s independent negligent acts...”³

Factual and Procedural History

Respondent is American Hardware Mutual Insurance Company. Respondent issued a liability insurance policy to its named insured, Clark Lift West, Inc. Clark Lift provided maintenance and repair services at the facility of appellant Southern Wine and Spirits of America, Inc. Because of this relationship, Southern Wine was an additional insured under Clark Lift’s policy. As an additional insured, Southern Wine was covered for liability “but only with respect to liability arising out of [the named insured’s] ongoing operations performed for that [additional] insured.”

Charles Pierce, a Clark Lift employee, was injured at the Southern Wine facility. Mr. Pierce was acting within the scope of his employment when injured. He filed a personal injury complaint to recover damages against Southern Wine for negligence. At the time of injury, Mr. Pierce was trying to repair a conveyor belt drive. The belt began moving, he slipped on a piece of loose cardboard, and when he tried to break his fall, his hand became caught in the belt resulting in injury.

Federal Insurance Company, Southern Wine’s general liability insurer, tendered the defense of Mr. Pierce’s action to American Hardware. American Hardware refused the tender because the coverage did not apply. American Hardware maintained that the coverage was triggered “when the additional insured can be held vicariously liable for the named insured’s negligence.”⁴

¹ By Emily Reed

² Fed. Ins. Co., v. Am. Hardware Mut. Ins. Co., Nev. Adv. Op. No. 31,1 (May 29, 2008).

³ *Id.* at 2.

⁴ *Id.* at 3.

Appellant then filed for declaratory relief in the state district court for a judicial determination and declaration that American Hardware had a duty to provide coverage. The action was removed to the United States District Court, District of Nevada, by American Hardware. The parties filed cross-motions for summary judgment. The U.S. District Court certified this question “pursuant to NRAP 5: Under Nevada law, does an additional insured endorsement provide coverage for an injury caused by the sole independent negligence of the additional insured?”⁵

Discussion

The Court has been asked to interpret the amount of coverage under the additional insured endorsement. This is a contract question, therefore a question of law. Clauses in insurance contracts are broadly interpreted to provide coverage to the greatest extent possible. “Clauses excluding coverage are interpreted narrowly against the insurer.”⁶ Ambiguities must be resolved in favor of the insured. Any insurer who wants to restrict a policy’s coverage must do so “clearly and distinctly” and must communicate “to the insured the nature of the limitation.”⁷

The ambiguous phrase in question is ‘arising out of.’ American Hardware’s endorsement contains no language clearly and distinctly limiting the policy coverage as it pertains to whose negligence is covered and whose negligence is excluded. The endorsements exact language is that it covers the additional insured “only with respect to liability arising of the [the named insured’s] ongoing operations performed for [the additional insured].” The Court held that this language is ambiguous and can be interpreted more than one way.⁸ Therefore, it must be construed in favor of the insured. The Court held that the endorsement provides “coverage to the additional insured for its own independent negligence connected to the named insured’s operations performed for the additional insured.”⁹

Nevada Jurisprudence

After the Court determined the coverage under the endorsement, the Court set out Nevada jurisprudence on contract interpretation and insurance disputes. The Court cites *National Union Fire Insurance v. Caesars Palace*¹⁰ for authority on Nevada interpretation of an additional insured endorsement.

National Union Fire Insurance dealt with a similarly worded additional insured endorsement. The Court in that case had determined that the “arising out of operations” language was ambiguous as to scope of coverage.¹¹ In that case a spectator was injured in a corridor after a boxing match when someone shouted “Watch out, he has a gun,” and other

⁵ *Id.* at 3.

⁶ *Id.* at 3-4, citing *National Union Fire Ins. v. Reno’s Exec. Air*, 100 Nev. 360, 365, 682 P.2d 1380, 1383 (1984).

⁷ *Id.* at 5.

⁸ *Id.* at 6.

⁹ *Id.* at 8.

¹⁰ 106 Nev. 330, 792 P.2d 1129 (1990).

¹¹ 106 Nev. at 331-32, 792 P.2d at 1129-30.

spectators stampeded.¹² The additional insured and the insurance company disputed coverage because the injuries occurred after the match and inside the additional insured's hotel.¹³

The Court held that when resolving an ambiguous insurance policy courts must look at "not only the policy's language, but also the parties' intentions, the policy's subject matter, and the circumstances surrounding the policy's issuance."¹⁴ The Court stated that the "the policy should also be 'construed to effectuate the reasonable expectations of the insured.'"¹⁵ The question of "whether, in the absence of any discovered intent to the contrary, the additional insured endorsement should be construed to effectuate the reasonably presumed intent of the additional insured in favor of coverage."¹⁶

This case differs from *National Union Fire Insurance* because American Hardware alleges that there is intent to the contrary. Since Southern Wine had its own general liability policy, American Hardware contends the additional insured endorsement was intended to "insulate Southern Wine from third-party claims related to Clark Lift's negligence."¹⁷ American Hardware contends that this demonstrates that the parties' expectations were that American Hardware would provide coverage when no other coverage otherwise existed.

The Court disagrees. The record does not indicate what the parties understood concerning the endorsement coverage. The Court found that the factors in *National Union Fire Insurance* are still good law, however, based on the facts in this case the Court decided to exercise its independent judgment in evaluating the facts in this case.

Because there are no concrete facts concerning the intent of the parties, the Court relies on traditional rules for interpretation. "Unclear terms are interpreted against the insurer and, unless express limiting language exists, in favor of coverage."¹⁸ In this case the phrase 'arising out of' covers "acts arising from the additional insured's own negligence." Since the clause does not limit liability depending on who is at fault, the endorsement provides coverage for liability regardless of who was at fault.

Other Jurisdictions

The Court discussed the law in other jurisdictions. In other jurisdictions courts have construed 'arising out of the operations' in favor of coverage. An insurance clause will be broadly construed unless there is limiting language restricting the coverage. The majority of jurisdictions interpret "additional insured endorsements in favor of coverage, regardless of fault, provided that the injury or loss is connected to the named insured's operations performed for the additional insured."¹⁹

¹² *Id.* at 332, 792 P.2d at 1130.

¹³ *Id.*

¹⁴ Fed. Ins. Co., v. Am. Hardware Mut. Ins. Co., Nev. Adv. Op. No. at 9.

¹⁵ *Id.* citing *National Union Fire Insurance*, 106 Nev. at 333, 792 P.2d at 1130.

¹⁶ *Id.* at 10.

¹⁷ *Id.*

¹⁸ *Id.* at 11.

¹⁹ *Id.* at 13-14.

Conclusion

The answer to the certified question is yes. “[A]bsent an expressed intent to the contrary, an additional insured endorsement that covers liabilities arising out of a named insured’s operations performed for the additional insured provides liability coverage, regardless of fault, so long as the injury or loss suffered is connected to the named insured’s operations performed for the additional insured’s benefit.”²⁰

²⁰ *Id.* at 16-17.