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Summary of United Nat'l Ins. Co. v. Frontier Ins. Co.

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CONTRACTS – DUTIES OF INSURERS

Summary

This case addresses an insurance company's duties to defend and indemnify an insured under a comprehensive general liability ("CGL") insurance policy. The court reviews the issue by examining the language of the specific CGL policy.

Disposition/Outcome

Reversed and remanded with instructions. The Nevada Supreme Court concluded that, based on the unambiguous language of the subject policy, Appellants do not have a duty to defend a claim that arises when there is no potential for coverage based on the allegations of the complaint. Furthermore, the duty to indemnify only arises if damage occurs while there is actual coverage under an insurance policy.

Factual and Procedural History

On September 8, 1993, Young Sign Company contracted with the Las Vegas Hilton Corporation to erect a 362-foot sign on the hotel's property. Young retained Uriah Enterprises as a subcontractor to install support components on the sign. Uriah was insured under a CGL policy issued by both United National Insurance Company ("United") and Assicurazioni Generali ("Generali"). The CGL policy indemnified Uriah against bodily injury or property damage claims caused by an "occurrence" from April 29, 1993 through April 29, 1994.

On April 29, 1994, United and Generali ceased indemnifying Uriah with regard to the Hilton sign and Uriah obtained a new CGL policy from Frontier Insurance Company ("Frontier"). Three months later, on July 18, 1994, the Hilton sign collapsed during a windstorm.

Numerous lawsuits were subsequently filed against Uriah for negligence, breach of implied warranty, and breach of contract, all related to the collapse of the Hilton sign. Uriah asked both United and Generali to defend and indemnify it against the claims. United and Generali refused to do so, citing that the sign's collapse occurred after the expiration of the policy period. Frontier, on the other hand, defended and indemnified Uriah against the claims, eventually settling them for \$250,000. The costs of settling the lawsuits totaled \$696,667.35.

On May 15, 1998 Frontier and Uriah filed an insurance subrogation action against United and Generali for defense and settlement expenses. Both sides moved for summary judgment. Uriah and Frontier contended that the allegations contained in the

¹ By Matt Wagner

various complaints of negligence against Uriah were broad enough to encompass an “occurrence” of “property damage” under the CGL policy, thus invoking United and Generali’s duties to defend and indemnify.

Meanwhile, United and Generali countered, arguing that the property damage resulting from the Hilton sign’s collapse occurred after the expiration of the CGL policy, thus imposing upon them no obligations to indemnify or defend.

Discussion

Insurance policies are contracts of adhesion, the language of which is broadly interpreted to afford “the greatest possible coverage to the insured,”² especially where such language is ambiguous. However, the CGL policy provided by United and Generali defined “occurrence” as an accident or exposure to conditions which results in property damage. “Property damage” included physical injury or destruction of tangible property during the policy period, or the loss of use of such property during the policy period. These definitions, the court held, were unambiguous. When read together, the terms of the CGL policy clearly indicated that an occurrence of injury or damage had to take place within the active policy period in order for there to be coverage.

Addressing the duty to indemnify, the court stated that an insurer is legally obligated to pay damages in an underlying action that gives rise to a claim under the policy.³ Yet, the resulting loss or damage must occur within the CGL policy’s coverage period. No evidence in the instant case was presented by Respondents with regard to any tangible, physical injury to the Hilton’s sign between April 1993 and April 1994. Instead, the only recorded tangible physical injury to the sign took place when it collapsed on July 18, 1994; therefore, there was no actual coverage under the United and Generali CGL policy. An insurer is released from the duty to indemnify at the expiration of a CGL policy.

The duty to defend is determined by comparing the allegations of a complaint with the terms of an insurance policy. The court turned to *Millers Mutual Fire Insurance v. Ed Bailey*⁴, an Idaho case involving a similar CGL policy, to further explain this duty. In *Millers*, the Idaho court held that “to stretch the scope of ‘accident’ backward in time to reach the date of the earliest beginning of any prior event which might be regarded as having a causal relation to the unlooked-for mishap would introduce ambiguity where none now exists.”⁵ Thus, when the terms of a particular CGL policy expire, so too does the duty to defend.

Adopting this course, the Nevada Supreme Court held that such things as improper welding or general negligent acts at the time of the construction of the sign were not the type of physical, tangible injury to property that a reasonable person would

² Farmers Insurance Group v. Stonik, 110 Nev. 64, 67, 867 P.2d 389,391 (1994).

³ Zurich Ins. Co. v. Raymark Industries, 514 N.E.2d 150, 163 (Ill. 1987).

⁴ 103 Idaho 377, 647 P.2d 1249 (1982).

⁵ *Id.* at 1253.

contemplate as covered under the subject CGL policy. Even so, since the complaints did not allege any physical, tangible injury to the sign which occurred during the period of coverage by United and Generali's CGL policy, these companies had no duty to defend Uriah.

Conclusion

Pursuant to the Nevada Supreme Court's holding in this case, where the language of a CGL policy is unambiguous, an insurance company has no duty to indemnify a former client for claims of injury or damage where that injury or damage does not occur until after the expiration of the policy. Similarly, an insurance company has no duty to defend a claim arising under a CGL policy if physical, tangible injury occurs after the expiration of the term of the policy.