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The 3rd Circuit Confirms Jurisdiction to Review District Court's Interlocutory Order and Affirms Duty to Defend Owner as Additional Insured in Subcontractor Employee's Suit

By Craig R. Blackman

In Ramara, Inc. v. Westfield Insurance Company, Fortress Steel Service, Inc., Sentry Builders Corp., and Anthony Axe, (C.A. No. 15-1003, 3rd Cir, Feb. 17, 2016), the 3rd Circuit Court of Appeals considered the insurer's appeal from the District Court's rulings on cross-motions for summary judgment. The coverage matter arose out of a workplace accident at a Philadelphia parking garage. Ramara, the garage owner, retained Sentry as a general contractor to perform work at its parking garage. Sentry hired Fortress as a subcontractor to install concrete and steel components as part of the project. As part of its contract with Sentry, Fortress obtained a general liability policy from Westfield naming Ramara as an additional insured under the policy. One of Fortress' employees, Anthony Axe, was injured on the job. As a result, he filed a tort action against Ramara and Sentry, but he did not include Fortress as a defendant because Fortress was immune from Axe's suit under the Pennsylvania Worker's Compensation Act (WCA). Ramara tendered its defense to Westfield as an additional insured, but Westfield declined to defend Ramara. Westfield contended that the complaint did not explicitly allege that Fortress' acts or omissions caused Axe's injuries, which Westfield asserted was required by the additional insured endorsement. Applying Pennsylvania law, the District Court granted partial summary judgment to Ramara, determining that Axe's complaint *had* triggered Westfield's duty to defend. The District Court ordered Westfield to both pay defense costs to date and prospectively defend Ramara. The District Court left unresolved the question of whether Westfield owed Ramara indemnification.

The 3rd Circuit decided two issues on appeal: first, whether it had jurisdiction over the District Court's interlocutory order, and second, whether Westfield's duty to defend was triggered under Pennsylvania law by the allegations within the Axe complaint.

On the jurisdictional issue, the 3rd Circuit determined that it *did* have appellate jurisdiction because the District Court's order on partial summary judgment, in part ordering Westfield to undertake Ramara's defense moving forward, was a mandatory injunction under 28 U.S.C. § 1292(a)(1). Pursuant to that section of the U.S.C., a district court's injunctive order, even if not a final judgment, is immediately appealable.

In determining whether an order is injunctive, the 3rd Circuit reaffirmed that what counts is what the court actually did, not what it *said* it did. Therefore, if a district court grants an interlocutory injunction, the order granting the injunction is appealable. In determining whether an order is, in fact, injunctive, the 3rd Circuit must determine whether the order

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adjudicates some of the relief sought in the complaint and is of such a nature that, if it grants relief, it could be enforced *pendente lite*, by contempt proceedings if necessary. The order at issue here directed both the payment of already accrued legal fees and costs and relief that is legal in nature, and it also directed Westfield to defend Ramara going forward. The 3rd Circuit confirmed that an order that prospectively grants an indeterminate amount of monetary relief is equitable in nature, that the subject District Court's order directing a prospective defense moving forward did precisely that and thus it was immediately appealable.

Once the court addressed the jurisdictional issue, it turned to the question of whether Axe's complaint triggered a duty to defend. The 3rd Circuit applied Pennsylvania's "four corners" test (the duty to defend is determined by allegations within the four corners of a complaint in comparison with the insurance policy provisions).

First, the court reviewed the subject insurance policy's additional insured endorsement and other insurance clause and, agreeing with the District Court, found that both the additional insured endorsement's proximate cause standard and the other insurance clause's "but for" causation standard were triggered by the allegations of the complaint.

The court, noting that proximate causation is defined as a cause which was a substantial factor in bringing about the plaintiff's harm, found that the underlying complaint was rife with allegations satisfying that test. The 3rd Circuit agreed with the District Court that the complaint's allegations raised at least the possibility that acts or omissions of the named insured, Fortress, was a proximate cause of the injuries, where Axe was injured during the course of his normal duties at the job site and the injury was caused by the acts or omissions of Ramara's "agents," "contractors" or "subcontractors," of which Fortress was one. Moreover, like the District Court, the 3rd Circuit agreed that the proximate cause test is more demanding than a but-for causation test, meaning that allegations satisfying the proximate cause test will necessarily satisfy a but-for causation test.

Finally, the 3rd Circuit acknowledged the fact that the underlying complaint conspicuously lacked substantive allegations of Fortress' acts or omissions, noting that the complaint explicitly names Fortress only once, by identifying Fortress as Axe's employer at the time of the injury. However, the 3rd Circuit agreed with the District Court that the sparse reference to Fortress in the underlying complaint was understandable in light of the WCA grant of tort immunity to employers for workplace injuries to their employees. The issue before the 3rd Circuit was whether consideration of the WCA and its effect on the underlying pleading violated Pennsylvania's strict interpretation of the "four corners" rule.

The court concluded that under Pennsylvania law, knowledge that an injured employee had a claim under the WCA must be factored into a determination of whether his allegations in the underlying complaint potentially trigger an obligation to provide coverage for the defendant in the underlying case. The 3rd Circuit noted that the "four corners" rule, even under Pennsylvania's strict construction, does not permit an insurer to make its coverage decision with blinders on, disclaiming any knowledge of coverage triggering facts. The 3rd Circuit held that where the WCA is relevant to a coverage determination, insurers (and the courts that review their determinations) must interpret the factual allegations of an underlying complaint recognizing that the plaintiff's attorney in the underlying action drafted the complaint taking the existence of the WCA into account. In doing so, the WCA operates as an interpretive constraint on the interpretation of the underlying allegations and the application of those allegations to the subject insurance policy provisions.

The 3rd Circuit also explicitly noted that this analytical approach does not expand or modify Pennsylvania's strict interpretation of the "four corners" rule and the principles underlying policy interpretation itself. In so holding, the court determined that an insurer that fails to account for the WCA in such circumstances may construe the factual allegations of the underlying complaint too narrowly, reiterating that the insurer that refuses to defend at the outset does so at its own peril. In sum, an insurer may not bury its head in the sand and disclaim knowledge of coverage triggering facts, even when applying a "four corners" analysis. ■

Author

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People News

Stephen J. Johnson, who was most recently the Deputy Insurance Commissioner for the Pennsylvania Insurance Department's Office of Corporate and Financial Regulation, joined Stradley Ronon as an insurance financial and regulatory specialist in our Philadelphia office. Bringing over 30 years' insurance industry experience to his new role, Steve will advise clients on insurance transactional, financial and compliance matters, with a focus on regulatory affairs. While at the Pennsylvania Insurance Department he oversaw the Bureau of Company Licensing and Financial Analysis and the Bureau of Financial Examinations, which have primary responsibility for carrying out the Department's financial solvency regulation. For more on Steve's experience and his role at Stradley, please read the press release on his hiring here.

Steve Davis served as a panelist for an International Association of Insurance Receivers Insolvency workshop on Feb. 25. The panel, "Shadowboxing with Government: Legislative and Executive Branch Considerations," addressed how to effectively interface with government officials about insurance and insurance insolvency issues to help mitigate the harmful results for creditors, policyholders, employees and other parties affected by the insolvency of an insurance company. He was joined on the panel by James P. Corcoran, the former superintendent of the New York State Department of Insurance; Tom Gallagher, the former Insurance Commissioner and Chief Financial Officer of Florida; and Belinda H. Miller, Chief of Staff of the Florida Office of Insurance Regulation.