Lucky No. 7: Seventh Circuit Court of Appeals Issues Pro-Policyholder Decision Regarding Additional Insured Coverage for Upstream Parties

In Scottsdale Ins. Co. v. Columbia Ins. Group, Inc,[1] the Seventh Circuit Court of Appeals recently held that a subcontractor's insurer was obligated to defend and indemnify the project owner's insurer for damages associated with the subcontractor's employee's personal injury lawsuit where the underlying complaint alleged negligence by the additional insureds. The case cements the notion that under Illinois law, one can significantly benefit from the facts presented in third party complaints as a basis for additional insured coverage.

Rockwell Properties ("Rockwell") was the project owner, along with Prairie Management & Development ("Prairie"), the general contractor, on a construction project in Chicago. Prairie subcontracted HVAC services to TDH Mechanical ("TDH"). When an employee of TDH Mechanical sustained serious injuries performing work at a construction site, a suit was lodged against Rockwell and Prairie in state court. The lawsuit did not bring any claims against TDH but instead alleged that both Rockwell and Prairie had negligently failed to supervise the subcontractors' work on-site, thus contributing to the worker's injuries.

Scottsdale Insurance Company ("Scottsdale"), Rockwell's carrier, picked up the underlying suit's initial defense costs and agreed to defend both Rockwell and Prairie. Subsequently, Scottsdale filed a declaratory action against Columbia, seeking a declaration that Columbia had a duty to defend and indemnify Rockwell and Prairie based on Columbia's additional insured endorsement language. The endorsement provided that:

> "Such person or organization is an additional insured only with respect to liability arising out of your ongoing operations performed for that insured. Liability for "bodily injury" or "property damage" caused, in whole, or in part, by "your work" arising out of your ongoing operations performed for that additional insured and included in the "products-completed operations hazard."

Under Illinois law, the district court noted that if the underlying complaint alleges facts within or potentially within policy coverage, an insurer is obligated to defend its insured even if the allegations are groundless, false, or fraudulent. Specifically, the court looked at whether the facts in the third-party complaint alleged wrongdoing by the parties. Columbia argued that because the underlying complaint did not allege wrongdoing by TDH, it had no duty to defend or indemnify nei-

[1] Scottsdale Ins. Co. v. Columbia Ins. Group, Inc, No. 19-3315, 2020 WL 5036095, (7th Cir. Aug. 26, 2020).

ther Rockwell nor Prairie. Dismissing Columbia's contentions, the court focused instead on the allegations of negligence levied against Rockwell and Prairie. The court noted that the underlying complaint accused the project owner and general contractor of "negligently failing to properly supervise the construction site and monitor work of their subcontractors…thereby allowing their subcontractors to engage in unsafe practice…". The court then reasoned that since TDH was one of those subcontractors, it was possible that TDH's negligence could be determined to be a cause of the plaintiff's injuries. Finding that there were sufficient facts from the face of the underlying complaint to bring the case potentially within coverage, the district court agreed with Scottsdale and declared that Columbia owed a duty to defend both parties.

On appeal, the issue before the court came down to whether Rockwell and Prairie's liability in the underlying suit could arise out of TDH's operations performed on their behalf. Based on the underlying complaint and third-party complaints, the Court of Appeals answered "yes." The Court agreed with the district court that the mere fact that Guzman did not bring a claim against TDH did not mean that Prairie and Rockwell could not be liable to Guzman based on and arising out of TDH's on-going operations performed for them.

In addition, the Court of Appeals looked to various third-party complaints filed against TDH to help inform its decision. The Court noted that under Illinois law, looking beyond the underlying complaint to determine a duty to defend was appropriate as long as the third-party complaints were not "self-serving" or filed by the additional insured seeking coverage. In this case, several defendants in the underlying suit filed third-party complaints against TDH for contribution. They alleged that TDH negligently failed to train its employees on multiple issues and failed to maintain a safe workplace, thus showing that TDH might have been at fault. The Court concluded that even without turning to the third-party complaints, it would have concluded that the underlying suit would have satisfied the "arising out of" language. Therefore the possibility of coverage, thus Columbia owed a duty to defend Prairie and Rockwell.

This ruling is favorable to upstream parties seeking additional insured coverage, especially those in Illinois. This jurisdiction is an Eight Corner state, meaning that courts will look to the four corners of the complaint as well as the policy when determining an insurer's duty to defend. It serves as an important reminder to insureds everywhere that the allegations found in the underlying complaint, as well as third-party complaints, can be one of the most powerful weapons when fighting for additional insured coverage.

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