

Judge James B. Zagel Rules Safety National Must Pay Thermos' Defense Costs

June 29, 2011

Kelley Drye & Warren LLP's Insurance Recovery group achieved a significant victory on behalf of TKK USA (formerly "The Thermos Company," a subsidiary of the Japanese Corporation Thermos K.K., and hereinafter "Thermos") in its lawsuit against Safety National Casualty Corporation ("Safety National"). The decision, which requires Safety National to reimburse asbestos-related defense costs, resolved an issue of first impression under Illinois law, and has potential implications for policyholders and employers' liability insurers in Illinois and elsewhere.

The dispute centered on whether or not an Employers Liability insurance policy sold by Safety National provides coverage for the fees and costs incurred in the defense of a wrongful death lawsuit brought by the estate of a former Thermos employee.

The Safety National policy requires Safety National to reimburse defense fees and costs incurred in connection with "Workers' Compensation Laws" or "Employers Liability Laws." The heart of the dispute between Thermos and Safety National was whether or not a negligence claim brought by an employee against its employer fell within the scope of the latter term, "Employers' Liability Laws." These words are not defined anywhere in the policy, and, until now, there was no Illinois authority interpreting them.

Safety National argued that the term "Employers' Liability Laws" should be limited so that the policy only provides coverage for lawsuits arising under two discrete Illinois statutory schemes, the Workers' Compensation Act ("WCA") and Occupational Disease Act ("ODA"). Safety's argument was based in large part on the fact that these statutes contains an exclusive remedy provision limiting the ability of employees to bring tort claims against their employers outside the confines of the WCA and ODA themselves, and therefore it would be difficult or impossible for the underlying plaintiff's negligence claim against Thermos to succeed.

Kelley Drye argued on behalf of Thermos that the term "Employers Liability Laws" should be given its broadest possible meaning, and must be read to encompass *any* attempt to impose liability upon an employer by an employee, whether meritorious or not. Therefore, even though the underlying claimant's negligence claim was barred by the exclusive remedy provision and stood practically no chance of success, Safety National remains liable for Thermos's costs of defense. Kelley Drye's based its position on the plain English meaning of the words "Employers' Liability Laws," the legal doctrine that policies drafted by insurers must be construed as broadly as the wording will reasonably allow, the fact that Safety National's policy requires it to pay defense costs for suits that are "groundless, false, or fraudulent," and the fact that two previous cases decided under the laws of other states (*i.e.*, Minnesota and Michigan) under similar fact patterns reached the interpretation sought by Thermos.

The Honorable James B. Zagel of the U.S. District Court for the Northern District of Illinois, Eastern Division agreed with Thermos's position, and ruled that Safety National must reimburse the defense costs at issue. In so ruling, the court declared, for the first time under Illinois law, that "the term 'Workers' Compensation Law' refers to the ODA and WCA, and 'Employers' Liability Law' means law other than the ODA or WCA that imposes liability on an employer for workplace related injuries."

"This is not only a good result for Thermos, but also a precedent for companies in Illinois that purchase Employers' Liability insurance. Considering the breadth of the exclusive remedy provisions of the WCA and ODA, if the court had accepted Safety National's argument restricting coverage only to claims brought under those two statutes, then the coverage afforded under an Employers' Liability policy, beyond what workers' compensation coverage already provides, would be very limited."

While Judge Zagel's decision has precedential effect only in courts following Illinois law, given the relatively small number of courts to address the issue previously, the decision is a persuasive precedent for policyholders in virtually every state.

The court has yet to enter final judgment, and therefore the 30 day time period for Safety National to file a notice of appeal to the U.S. Court of Appeals for the Seventh Circuit has not yet begun to run. However, at a status conference before Judge Zagel on July 14, 2011, Safety National stated that it intends to appeal the decision.

Click below for a copy of the memorandum opinion and order.