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Liberty, Hartford, Others Need Not Cover Toxic Exposure Fight

By **Daphne Zhang**

Law360 (September 17, 2020, 10:36 PM EDT) -- A Pennsylvania federal court freed Liberty Mutual Insurance Co., Hartford Casualty Insurance Co. and two other insurers from having to cover a steel company for hundreds of bodily injury claims, ruling Thursday that the insured's claim is too late and a pollution exclusion bars coverage.

U.S. District Judge William S. Stickman said that the carriers are not obligated to pay for Allegheny Ludlum LLC's \$1.3 million settlement and \$3 million defense costs in an underlying toxic chemical exposure suit seeking compensatory damages for "wantonness." Allegheny held insurance policies from Liberty, Hartford, Continental Casualty Co. and U.S. Fidelity and Guaranty Co.

On Thursday, Judge Stickman said that all of Allegheny's claims against Liberty Mutual and Hartford are time-barred. Its claims against Continental and USF&G were also dismissed because the policies only cover bodily injury arising from an "occurrence," the judge said. The underlying action never mentioned negligence or "occurrence," but "willful wanton conduct," he added.

In the underlying suit, ArvinMeritor Inc., which owned a car muffler manufacturing facility in Fayette, Alabama, said some of the products it used were bought from Pittsburgh-based Allegheny. In 2005, ArvinMeritor's former employees added Allegheny as a defendant in a toxic chemical exposure suit. In January 2009, the Alabama Supreme Court dismissed injury claims before 1999, citing the statute of limitations, according to papers.

In 2010, Allegheny told Liberty Mutual and Hartford that they did not owe coverage for the underlying suit. The two insurers set a cost-share limit to Allegheny's pre-2009 defense costs in 2013, according to filings. However, three years later, Allegheny said it wrongly interpreted the underlying action and made a mistake in negotiating the 2013 cost-share. The steel company settled the underlying litigation in 2017 and sued the four insurers after they denied coverage in September that year.

In Thursday's opinion, Judge Stickman said Allegheny changed its position too late after the statute of limitations expired in 2014, three years before its suit was filed. Hartford and Liberty denied payment in 2010 and the four-year time limit started shrinking after an "insurer clearly and unequivocally denies coverage," the judge said.

The judge cited previous case law, holding that "the triggering event for the limitations period on a coverage declaratory judgment action was the moment the insured had sufficient facts to support its claim that it does not owe coverage."

Judge Stickman also rebuffed Allegheny's argument that because Hartford said in a 2010 letter that "there 'may be' no indemnity coverage for the underlying lawsuit," there is ambiguity in the carrier's statement and potential for coverage.

"That view is mistaken," the judge said. "Contractual language should not be interred in isolation but must be read with reference to the context in which it appears. The insurers have clearly denied coverage."

In the opinion, Judge Stickman said Continental and USF&G are not obligated to provide coverage because the underlying suit never mentioned an "occurrence," which is defined as an "accident" in the policy. The court does not believe wantonness relating to toxic chemicals exposure constitutes an accident because an act of wantonness is intentional, he said.

The judge said Allegheny's trying to define reckless or wanton conduct as an "unexpected" accident without supporting case laws is "a bridge too far."

Additionally, Judge Stickman said, since the underlying action specifically alleged exposure to toxic steel welding fumes, defined as pollutants by its policy, USF&G's pollution exclusion bars coverage. The judge also agreed with Continental's position that it has no coverage duty because Allegheny's \$1.3 million settlement payment did not exceed the minimum deductible threshold of \$2 million.

Representatives from the parties could not be immediately reached for comment.

Allegheny is represented by Thomas J. Smith, David R. Osipovich and Jessica Moran of K&L Gates LLP

Liberty Mutual is represented by John C. Sullivan and Kathleen K. Kerns of Post & Schell PC.

Continental is represented by Ansley S. Westbrook II, John J. Berry and Nicholas J. Godfrey of Dinsmore & Shohl LLP and Scott E. Turner and Seth Goodman Park of CNA Coverage Litigation Group

USF&G is represented by Alan S. Miller and R. Brandon McCullough of Houston Harbaugh PC.

Hartford is represented by Michael A. Shiner of Tucker Arensberg and James Ruggeri and Timothy R. Dingilian of Shipman & Goodwin LLP.

The case is Allegheny Ludlum LLC v. Liberty Mutual Insurance Co. et al., case number 2:17-cv-01243, in the U.S. District Court in the Western District of Pennsylvania.

--Editing by Michael Watanabe.