

THOUGHT LEADERSHIP

News

INSURER PREVAILS IN A TEXAS DECLARATORY JUDGMENT ACTION CONCERNING A WEST VIRGINIA PERSONAL INJURY CASE

Newsbrief

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In *Zurich American Ins. Co. v. Cabot Oil & Gas Corp.*, 2015 WL 5604068 (S.D. Tex. – Houston, Sept. 23, 2015), Zurich issued a workers compensation and employers liability policy to Cabot Oil & Gas (“Cabot.”) Taylor was then injured while welding for Cabot and he filed a personal injury law suit in West Virginia against Cabot. Zurich filed a motion to intervene in the West Virginia case. Cabot responded with a motion for declaratory judgment arguing Zurich owed Cabot a duty to defend and a duty to indemnify. The West Virginia court granted Zurich’s motion to intervene and set the case for trial in November 2015. Zurich then filed this declaratory judgment suit in Texas. Cabot moved to dismiss the Texas suit and Zurich moved for summary judgment.

The Texas court denied Cabot’s motion to dismiss based on weighing the six factors the Fifth Circuit Court of Appeals typically uses when determining whether or not to dismiss a declaratory judgment suit and held the last factor was dispositive: 1) “arguably” Zurich’s liability can be litigated in the West Virginia case since Zurich was allowed to intervene to the extent the intervention was allowed solely for the purposes of submitting some special interrogatories to the jury, but not for purposes of discovery or participating in the trial; 2) Zurich did not file the Texas suit in anticipation of Cabot; 3) Zurich did not engage in impermissible forum shopping because the result will be the same under both Texas and West Virginia law; 4) Zurich did not use the declaratory judgment process to gain access to a federal forum on improper or unfair grounds; 5) the federal forum in Texas is a convenient forum since no one argues it would be unduly burdensome; 6) the federal case is ready for resolution, and its dismissal would force the West Virginia court to start from scratch. Thus, the Texas federal court denied the motion to dismiss because “on balance, none of the other factors [beyond #6] weigh strongly in favor of dismissal, while resolving the solitary issue of Zurich’s liability in this Court would better serve the purposes of judicial economy.”

The Texas court then granted Zurich’s motion for summary judgment on the basis that West Virginia law governs the disposition of the case. In this case, while Cabot does business in several states, the Zurich policy contains an express provision for insured risks in West Virginia entitled the “West Virginia Employers Liability Insurance Intentional Act Exclusion Endorsement.” This endorsement excludes bodily injury resulting from ‘deliberate intention as that term is defined by West Virginia Code sec. 23-4-2.’ Since the underlying Complaint in the West Virginia case alleged Cabot acted with “deliberate intent as described in Chapter 23, Article 4, Section 2(d)(2)(ii), of the Code of West Virginia,” the Texas court held there was no coverage under the Zurich policy and granted Zurich’s summary

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judgment.