SUPREME COURT OF NEW JERSEY

Potomac Insurance Co. of Illinois ex rel. OneBeacon Insurance Co. v. Pennsylvania Manufacturers' Association Insurance Co.

215 N.J. 409 (2013) · Decided September 16, 2013

SUMMARY

The New Jersey Supreme Court held that an insurer that paid defense costs for a common insured may assert a direct contribution claim against a co-insurer for the co-insurer’s allocated share of those costs. Applying the continuous-trigger and equitable-allocation principles of Owens-Illinois and Carter-Wallace, the Court upheld allocation of defense costs among successive insurers. The Court also held that a release executed by the insured and one co-insurer did not extinguish the nonparty insurer’s contribution claim.

CASE DETAILS

COURT	Supreme Court of New Jersey
WRITING FOR THE COURT	Justice Patterson; Chief Justice Rabner; Justice LaVecchia; Justice Albin; Justice Hoens; Judge Rodríguez
JURISDICTION	New Jersey
DECIDED	September 16, 2013
DISPOSITION	affirmed
PROCEDURAL POSTURE	OneBeacon sued PMA and other insurers for reimbursement of a proportionate share of defense costs incurred while defending their common insured in construction-defect litigation. After a bench trial, the trial court recognized OneBeacon's direct contribution claim, allocated sixteen percent of the defense costs to PMA, and entered judgment for OneBeacon. The Appellate Division affirmed the allocation and contribution ruling. The Supreme Court of New Jersey granted PMA's petition for certification and affirmed.
STANDARD OF REVIEW	The legal question whether an insurer may assert a contribution claim against a co-insurer was reviewed de novo. The trial court's factual findings concerning the scope and effect of the release were entitled to substantial deference and were binding if supported by adequate, substantial, credible evidence.
PRECEDENTIAL VALUE	Published precedential opinion

PARTIES	Pennsylvania Manufacturers' Association Insurance Company v. Potomac Insurance Company of Illinois ex rel. OneBeacon Insurance Company

TOPICS

insurance coverage · duty to defend · construction defects · commercial litigation · contract interpretation

PRACTICE AREAS

insurance coverage · construction law · commercial litigation · contracts

QUESTIONS PRESENTED

1. Whether an insurer that paid defense costs for a common insured may assert a direct contribution claim against a co-insurer for the co-insurer's proportionate share of those costs.
2. Whether a release executed by the common insured and the co-insurer extinguished the non-signatory insurer's independent contribution claim for defense costs.
3. Whether the trial court properly allocated sixteen percent of the defense costs to PMA under New Jersey's continuous-trigger and pro rata allocation methodology.

HOLDINGS

1. An insurer that pays more than its proportionate share of defense costs for a common insured may assert a direct contribution claim against a co-insurer that had an obligation to defend and indemnify the insured.
2. The release between Aristone and PMA did not bar or limit OneBeacon's independent contribution claim because OneBeacon was neither a party to nor a signatory of the release, and the release did not purport to waive OneBeacon's rights.
3. The trial court properly allocated sixteen percent of the defense costs to PMA under the continuous-trigger and pro rata allocation principles governing the insurers' successive coverage.

KEY QUOTATIONS

> *“We concur with the Appellate Division that recognizing an insurer’s cause of action for contribution against a co-insurer for allocation of defense costs comports with Owens-Illinois and its progeny.”* (425-426)

> *“We concur with the trial court and the Appellate Division that OneBeacon was properly permitted to assert a direct claim against PMA for contribution of a portion of the defense costs paid on Aristone’s behalf.”* (429)

> *“In short, the evidence reviewed by the trial court supports its finding that OneBeacon’s contribution claim against PMA was not barred or limited by the March 2, 2007 release between PMA and its insured, Aristone.”* (430)

FACTUAL BACKGROUND

Evesham sued contractor Roland Aristone Inc. for property damage and construction defects at a school, principally involving roof leakage. Aristone was insured successively by PMA, Newark, Royal, OneBeacon, and Selective during the period of continuing property damage. OneBeacon and Selective paid Aristone's defense costs, while PMA initially disclaimed coverage; after arbitration determined that PMA had a duty to defend and share litigation costs, PMA paid $150,000 toward settlement of the underlying claim in exchange for a release signed only by Aristone. OneBeacon then sought contribution from PMA for its disproportionate share of Aristone's defense costs.

PROCEDURAL HISTORY

Aristone's declaratory judgment action against PMA was resolved through arbitration and settlement after the arbitrator determined that PMA had a duty to defend and share litigation costs. Aristone then released PMA, but OneBeacon, which had paid defense costs, filed a separate contribution action. The trial court ruled for OneBeacon following a three-day bench trial, and the Appellate Division affirmed the relevant judgment. The Supreme Court affirmed the Appellate Division.

DISPOSITION

affirmed

CASES CITED

- Owens-Illinois Inc. v. United Insurance Co., 138 N.J. 437, 650 A.2d 974 (1994)
- Carter-Wallace, Inc. v. Admiral Insurance Co., 154 N.J. 312, 712 A.2d 1116 (1998)
- Childs v. New Jersey Manufacturers Insurance Co., 108 N.J. 506, 531 A.2d 723 (1987)
- Estate of Hanges v. Metropolitan Property & Casualty Insurance Co., 202 N.J. 369, 997 A.2d 954 (2010)
- Manalapan Realty, L.P. v. Township Committee of Manalapan, 140 N.J. 366, 658 A.2d 1230 (1995)
- Cesare v. Cesare, 154 N.J. 394, 713 A.2d 390 (1998)
- Rova Farms Resort, Inc. v. Investors Insurance Co. of America, 65 N.J. 474, 323 A.2d 495 (1974)
- Fireman's Fund Insurance Co. v. Maryland Casualty Co., 65 Cal. App. 4th 1279, 77 Cal. Rptr. 2d 296 (1998)
- Chemical Leaman Tank Lines, Inc. v. Aetna Casualty & Surety Co., 978 F. Supp. 589 (D.N.J. 1997)
- Chemical Leaman Tank Lines, Inc. v. Aetna Casualty & Surety Co., 177 F.3d 210 (3d Cir. 1999)
- Benjamin Moore & Co. v. Aetna Casualty & Surety Co., 179 N.J. 87, 843 A.2d 1094 (2004)
- Spaulding Composites Co. v. Aetna Casualty & Surety Co., 176 N.J. 25, 819 A.2d 410 (2003)
- Universal-Rundle Corp. v. Commercial Union Insurance Co., 319 N.J. Super. 223, 725 A.2d 76 (App. Div. 1999), certif. denied, 161 N.J. 149, 735 A.2d 574 (1999)
- Sayre v. Insurance Co. of North America, 305 N.J. Super. 209, 701 A.2d 1311 (App. Div. 1997)
- Willingboro Mall, Ltd. v. 240/242 Franklin Avenue, L.L.C., 215 N.J. 242, 71 A.3d 888 (2013)
- State v. Williams, 184 N.J. 432, 877 A.2d 1258 (2005)
- Herrera v. Township of South Orange Village, 270 N.J. Super. 417, 637 A.2d 526 (App. Div. 1993), certif. denied, 136 N.J. 28, 641 A.2d 1039 (1994)

- Padilla Construction Co. v. Transportation Insurance Co., 150 Cal. App. 4th 984, 58 Cal. Rptr. 3d 807 (2007)
- Community Redevelopment Agency v. Aetna Casualty & Surety Co., 50 Cal. App. 4th 329, 57 Cal. Rptr. 2d 755 (1996)
- Franklin Mutual Insurance Co. v. Jersey Central Power & Light Co., 188 N.J. 43, 902 A.2d 885 (2006)

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