SUPREME COURT OF DELAWARE

In re Viking Pump, Inc. and Warren Pumps, LLC Insurance Appeals

148 A.3d 633 (Del. 2016) · No. Nos. 518, 523, 525, and 528, 2014 · Decided September 12, 2016

SUMMARY

The Delaware Supreme Court reviewed consolidated appeals involving insurance coverage for asbestos-related liabilities arising from businesses formerly owned by Houdaille Industries, Inc. The court addressed the validity of assignments of insurance rights, exhaustion of underlying coverage, allocation of losses, vertical versus horizontal exhaustion, and defense costs under excess insurance policies. The court affirmed in part and reversed in part the judgments of the Superior Court and Court of Chancery.

CASE DETAILS

COURT	Supreme Court of Delaware
WRITING FOR THE COURT	Justice Valihura; Justice Holland; Justice Vaughn; Judge Walls; Judge Ryan
JURISDICTION	Delaware
DECIDED	September 12, 2016
DOCKET	Nos. 518, 523, 525, and 528, 2014
DISPOSITION	other
PROCEDURAL POSTURE	Consolidated appeals from separate judgments of the Delaware Court of Chancery and Superior Court in an insurance-coverage dispute involving asbestos-related claims. The Delaware Supreme Court certified two unsettled New York-law questions to the New York Court of Appeals, then resolved the remaining legal issues.
STANDARD OF REVIEW	De novo review of summary-judgment rulings, contract interpretation, and insurance-policy construction; clearly erroneous review of factual findings; jury verdict findings are conclusive when supported by the evidence.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Viking Pump, Inc., Warren Pumps, LLC, Travelers Casualty and Surety Company, Excess Insurers v. Certain Underwriters at Lloyd's, London and certain London Market Insurance Companies, Granite State Insurance Company, Lexington Insurance Company, National

Union Fire Insurance Company of Pittsburgh, PA, TIG Insurance Company, Westchester Fire Insurance Company, ACE Property & Casualty Insurance Company, Century Indemnity Company, OneBeacon America Insurance Company, XL Insurance America, Inc., Republic Insurance Company, Westport Insurance Corporation, Old Republic Insurance Company, Travelers Casualty and Surety Company

TOPICS

insurance coverage · excess insurance · duty to defend · contract interpretation · appellate procedure

PRACTICE AREAS

insurance coverage · insurance · contracts · commercial litigation · appellate procedure

QUESTIONS PRESENTED

1. Whether Houdaille validly assigned its rights under the excess insurance policies to Warren and Viking without obtaining the insurers' consent.
2. Whether the anti-assignment provisions barred transfers of insurance rights relating to losses that occurred before the assignments.
3. Whether the 1980-1985 Liberty primary policies were exhausted despite per-occurrence deductibles.
4. Whether the Liberty umbrella policies imposed obligations to pay defense costs after exhaustion of the underlying primary policies.
5. Whether the excess policies covered defense costs and, if so, whether those costs were payable within or in addition to policy limits.
6. Whether the policies required all-sums or pro-rata allocation and whether vertical or horizontal exhaustion applied.
7. Whether the excess policies were triggered only by policies in place during a claimant's significant asbestos exposure.

HOLDINGS

1. The Warren Asset Sale Agreement Amendment unambiguously assigned Warren the insurance coverage in excess of the primary casualty limits, including coverage under the excess policies.
2. The Viking Assignment and Assumption Agreement comprehensively transferred to Viking the assets and liabilities necessary to operate the Viking Pump business, including rights to insurance coverage.
3. Anti-assignment provisions did not bar assignment of insurance rights relating to losses that occurred before the assignments.
4. The 1980-1985 Liberty primary policies were exhausted, and exhaustion did not depend on whether Liberty or the insureds paid the applicable deductibles.

5. The Liberty umbrella policies imposed defense obligations once the underlying primary coverage was exhausted, and defense costs were payable in addition to the umbrella policy limits.
6. Excess policies that truly followed form or followed form by endorsement inherited the Liberty umbrella policies' obligation to pay defense costs in addition to policy limits.
7. The Group One and Group Two policies covered defense costs within their policy limits.
8. The Group Three policies imposed a duty to pay defense costs, contingent on the insurers' consent, and those costs were payable in addition to policy limits.

KEY QUOTATIONS

> *"As a general matter, New York follows the majority rule that [a no-transfer] provision is valid with respect to transfers that were made prior to, but not after, the insured-against loss has occurred."* (22)

> *"Thus, whether an amount paid in settlement of a claim fell within the $100,000 deductible or not, its payment counted toward satisfaction of the aggregate policy limit."* (34)

> *"The Group Three policies therefore incorporate the default follow-form duty to pay defense costs as reflected in the underlying policies."* (56)

FACTUAL BACKGROUND

Viking Pump and Warren Pumps acquired pump-manufacturing businesses from Houdaille Industries in the 1980s and later faced asbestos-related personal-injury claims arising from exposure during the Houdaille era. Houdaille had purchased occurrence-based primary, umbrella, and excess insurance from 1972 through 1985, including 35 excess policies issued by 20 carriers. Viking and Warren sought to use that insurance program to fund the claims, while the excess insurers disputed the assignments, allocation method, exhaustion of underlying coverage, policy trigger, and defense-cost obligations.

PROCEDURAL HISTORY

Viking and Warren sued insurers seeking access to excess insurance policies originally issued to Houdaille Industries for liabilities arising from asbestos exposure during the Houdaille era. The Court of Chancery held that Viking and Warren obtained valid assignments of insurance rights and that the policies required all-sums allocation. The Superior Court resolved additional issues after a jury trial, including exhaustion of underlying Liberty policies, defense-cost coverage, and policy-trigger questions. After certifying questions to the New York Court of Appeals, the Delaware Supreme Court affirmed in part and reversed in part.

DISPOSITION

other

REMAND INSTRUCTIONS

The judgment is affirmed in part and reversed in part; the lower courts are to proceed consistently with the Supreme Court's rulings on assignments, exhaustion, defense costs, allocation, exhaustion methodology, and policy triggers.

CASES CITED

- In re Viking Pump, Inc., 52 N.E.3d 1144 (N.Y. 2016)
- Consolidated Edison Co. of New York, Inc. v. Allstate Insurance Co., 774 N.E.2d 687 (N.Y. 2002)
- Raymond Corp. v. National Union Fire Insurance Co., 5 N.Y.3d 157 (N.Y. 2005)
- Greenfield v. Philles Records, Inc., 780 N.E.2d 166 (N.Y. 2002)
- W.W.W. Associates, Inc. v. Giancontieri, 566 N.E.2d 639 (N.Y. 1990)
- Globecon Group, LLC v. Hartford Fire Insurance Co., 434 F.3d 165 (2d Cir. 2006)
- Stonewall Insurance Co. v. Asbestos Claims Management Corp., 73 F.3d 1178 (2d Cir. 1995)
- Seaboard Surety Co. v. Gillette Co., 476 N.E.2d 272 (N.Y. 1984)
- Moses v. Drake, 109 A.3d 562 (Del. 2015)
- Salamone v. Gorman, 106 A.3d 354 (Del. 2014)
