INSURERS TO INDEMNIFY $132 MILLION LOSS FROM TRAIN COLLISION ALLEGEDLY CAUSED BY TEXTING ENGINEER

Michael S. Levine and Paul T. Moura

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The Los Angeles Superior Court in *Those Certain Underwriters at Lloyd's London et al. v. Connex Railroad LLC et al.*,[1] applying New York law, recently held that a group of insurers were obligated to indemnify Connex for over $132 million in claims arising out of a 2008 commuter train collision that left 25 people dead and many others injured. The court rejected the insurers' attempt to invoke an exclusion for bodily injury, personal injury or property damage that was intended or expected by the insured, finding that the exclusion applies only where the insured, or a reasonable person in the insured's position, would have known that the collision and its specific damages would directly ensue.

Background

Connex arose out of a coverage dispute concerning claims brought against Connex following a tragic train accident in Chatsworth, California. A passenger train, owned by Southern California's Metrolink system and operated by Connex, collided with a freight train on a single track just north of Chatsworth, resulting in 25 passenger and crew member deaths and many injuries. It was later determined that the train operator, Robert Sanchez, had been texting just seconds before the collision. Many passengers or their heirs subsequently filed personal injury suits against Connex and Metrolink, who then agreed to jointly fund an interpleader action in federal court in the amount of $200 million.

Lloyd's of London contributed $132.5 million into the fund — its full policy limits — and thereafter filed this action against Connex seeking recoupment. Lloyd's and Connex's other insurance carriers alleged that the accident was caused by the Sanchez's negligence, and that Connex knew that employees like Sanchez had been violating company policy by using mobile phones on duty, but failed to report those violations to regulators. Lloyd's claimed that coverage was precluded under an exclusion for "bodily injury which the insured intended or expected or reasonably could have expected," on the basis that Connex knew that its employees were using mobile phones in violation of company policy, and that such use posed a danger to passengers.

Holdings

The Los Angeles Superior Court, applying New York law, held that the "intentional acts" exclusion did not apply to preclude coverage. The court explained that the exclusion can be triggered only if the insured, or a reasonable person in the insured's position, would have known that the injuries and damages actually suffered would immediately and directly flow from the insured's intentional acts. The court held that Lloyd's and the other insurers had failed to demonstrate any such knowledge. In finding that the insurers owed coverage, the court emphasized that the insurers had conceded that neither Sanchez nor any other Connex engineer had ever caused any injury or damage because of a violation of Connex's mobile phone rule prior to the Chatsworth accident. The insurers did not allege that Sanchez intended that the accident occur, and acknowledged that Connex had not seen any records of Sanchez's mobile phone usage prior to the accident. Accordingly, the court concluded that the insurers "do not possess and cannot reasonably obtain evidence that [Connex], or a reasonable party in [Connex's] position, would have known that the Chatsworth accident would occur directly and immediately as a result of any intentional acts by Connex."

Implications

Connex serves as a reminder that often more than a deliberate act by the insured is required for an insurer to successfully limit coverage based on a so-called "intentional acts" exclusion. As *Connex* demonstrates, both the act and specific injury must be expected or intended before the exclusion will be applied to bar coverage. Such a narrow construction of the exclusion is consistent with the general rule of insurance policy interpretation that exclusions and limitations on coverage are construed narrowly and strictly against the carrier, with the burden being on the carrier to prove that the exclusion or limitation, in fact, applies.

Note

[1] BC493509 (L.A. Sup. Ct. Sept. 18, 2015).

About The Authors

Michael S. Levine is counsel at **Hunton & Williams LLP**, focusing his practice on complex business litigation, insurance coverage advice and related coverage litigation. He may be contacted at mlevine@hunton.com.

Paul T. Moura is an associate at **Hunton & Williams LLP**, practicing complex commercial litigation and related insurance recovery litigation. He may be contacted at pmoura@hunton.com.