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Duty To Defend In Florida Extends To Excluded Claims

by Walter J. Andrews, Sergio F. Oehninger and Matthew T. McLellan

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The United States District Court of the Southern District of Florida in National Union Fire Ins. Co. v. Florida Crystals Corp., et al., No. 14-81134-CIV-COHN/VALLE (S.D. Fla. May 11, 2015) denied an insurer's motion for summary judgment that it had no duty to defend an insured farmer against claims concerning the aerial application of herbicide. The court held that allegations of unintentional harm constitute an accident that could qualify as an "occurrence" under an insurance policy. The court also ruled that a coverage endorsement restoring coverage for harms arising from the aerial application of chemicals prevailed over potentially applicable exclusions.

Background

The underlying litigation involved claims arising from the aerial spraying of herbicide beyond the boundaries of the insureds' property and onto a neighboring commercial nursery. Florida Crystals Corp. and Sugar Farms Co-op own a sugar-cane operation. The insureds directed Roma Air Corp. to spray herbicide over a large area of land that included not only the insureds' property, but also a neighboring commercial nursery owned by Date Palm Wholesalers Inc. After the herbicide damaged Date Palm's trees, Date Palm sued the insureds and Roma Air (the "underlying action.")

The insureds sought coverage for the defense of the underlying action under an insurance policy issued by National Union Fire Insurance Company. National Union filed a lawsuit, seeking a declaration that the policy imposes no duty to defend the insureds in the underlying action.

The Court's Analysis and Holding

The court denied National Union's motion for summary judgment, holding that the insurer failed to establish that it was relieved of its duty to defend the insureds in the underlying action.

National Union contended that the underlying action only involved allegations of intentional conduct and therefore did not allege an "occurrence," defined in the policy as an "accident," triggering coverage under the policy. The court rejected the insurer's argument, holding that the complaint included allegations of unintentional harm constituting an "accident." The court distinguished between an insured whose intentional acts result in an unintended accident and an insured who intends the harmful result of its conduct. Even where conduct itself may be intentional, an "occurrence" may nevertheless be found where an insured does not intend the resulting harm or damages. The underlying complaint alleged that the insureds failed to investigate the ownership of Date Palm's property, resulting in the mistaken designation of the property for the application of herbicide. This plausibly alleged a mistake giving rise to third-party

property damage that the insureds neither expected nor intended. Finding that this constituted an "accident," the court rejected National Union's argument that the underlying action did not allege an accident that could give rise to an "occurrence" under the policy.

National Union also argued that various exclusions in the policy barred coverage for the underlying action. One exclusion in the policy barred coverage for claims "directly or indirectly occasioned by ... pollution and contamination of any kind whatsoever." However, the court found that a subsequent endorsement acted as a "buy back," restoring coverage for harm arising from the aerial application of chemicals.

Another policy exclusion that barred coverage for property damage caused by "services performed by or on behalf of" the insured applied. But the court ruled that the coverage granted in the "buyback" endorsement also overrode this exclusion, because the endorsement extended coverage to include the aerial application of chemicals that were "of benefit to or of direct use in the business of" the insureds.

National Union also argued that an exclusion barring coverage for "injury or damage to either property or crops being treated ... by aerial application of chemicals" barred coverage because the underlying complaint was premised on harms arising from damage to Date Palm's crops caused by the aerial application of chemicals. According to the court, however, the complaint "does more than seek compensation for injury to property or crops being chemically treated." The complaint also sought lost profits resulting from the spraying, which "are economic harms distinct from property damage." Thus, this exclusion did not apply to at least some of the allegations. Citing established Florida law, the court opined that "[w]here the complaint in an underlying action contains claims both within and without the scope of coverage, an insurer's duty to defend is triggered with respect to the entire action." The court therefore rejected National Union's argument for summary judgment on the duty to defend in relation to this exclusion.

In addition, National Union asserted that an exclusion for "property damage to property ... in the ... control of the insured" barred coverage. The court rejected this argument as well. Florida courts have interpreted "control" in the context of similar exclusions to refer to some dominion or possessory control over the property at issue. Here, Date Palm did not allege that the insureds ever possessed or controlled its property. Instead, the complaint alleged that the insureds' agent flew over Date Palm's property spraying chemicals. Because these allegations did not establish property damage to property in the control of the insureds, the court found that the applicability of the exclusion was uncertain. Accordingly, the court ruled that the exclusion did not relieve National Union of its duty to defend.

Finally, National Union argued that an "excess other insurance" clause in its policy relieved it of its duty to defend. The clause provided that coverage under National Union's policy was "excess over any other valid and collectible insurance available to the insured." Because the insureds were listed as additional insureds under Roma Air's insurance policy, National Union maintained that it had no duty to defend and only provided excess coverage. However, Roma Air's insurance policy also contained a substantially similar "excess other insurance" clause. Applying Florida law, the court held that the two clauses effectively canceled each other out. The court therefore ruled that the "excess other insurance" clause did not relieve National Union of its duty to defend.

Accordingly, the court ruled that National Union was not entitled to summary judgment, as the insurer failed to establish that it was absolved from a duty to defend.

Implications

Florida Crystals illustrates that allegations of unintentional harm may constitute an "accident" that could give rise to an "occurrence" under liability policies, triggering an insurer's duty to defend even where the underlying complaint involves some intentional conduct. In evaluating an insurer's duty to defend, it is therefore important to review all of a complaint's allegations. This case also demonstrates the importance of reviewing the entire insurance policy when evaluating potential coverage. Particularly, it is critical to understand how endorsements and terms in the policy form interact. As this case illustrates, even where a particular claim may be subject to an exclusion, an endorsement can restore coverage. This may be true even if the endorsement does not specifically refer to or purport to override an otherwise applicable exclusion. Additionally, policyholders should be mindful of the various forms of relief sought by claimants. Even where certain types of claims may be expressly excluded from coverage, related claims may trigger a duty to defend. Finally, this case also reiterates the broad nature of the duty to defend which obligates an insurer to defend an entire action, even where the majority of the claims or relief sought are outside of coverage.