

In The News

Worker Deaths Not 'Occurrence' Under Okla. Law, Insurers Say

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Law360, New York (July 2, 2013, 5:14 PM EDT) -- Two insurers on Monday asked a federal judge to toss an Oklahoma oil drilling company's lawsuit seeking defense and indemnity for litigation the company is facing over the deaths of two employees, saying the claims in the underlying suit aren't covered.

Cactus Drilling Co. LLC sued its umbrella carrier, National Union Fire Insurance Co. of Pittsburgh Pa., and its claims administrator, Chartis Claims Inc., in 2011 after National Union denied Cactus' claim for coverage in a suit filed by the families of the two workers who died in 2009 when an oil rig broke during construction.

National Union said in a motion for summary judgment filed Monday that it denied coverage because, among other things, Oklahoma law holds that employment liability claims of the type asserted against Cactus, known as "Parret claims," are not for an accident or "occurrence" under liability insurance policies; rather, the claims are based on intent.

In *Parret v. Unicco Service Co.*, the Oklahoma Supreme Court held that in order for an employer's conduct to amount to an intentional tort, the employer must have desired to bring about the worker's injury or acted with the knowledge that such injury was substantially certain to result from the employer's conduct.

"Oklahoma courts consistently hold that Parret claims do not satisfy the accident or 'occurrence' requirement in a liability policy insuring agreement, and, in any event, are intentional torts for which coverage is negated by an intentional injury exclusion," the motion said.

Cactus has argued that it had a reasonable expectation of coverage for Parret claims and that the underlying claims against Cactus were for its vicarious liability, not its direct liability, so the claims fall within coverage.

"Contrary to Cactus' arguments, however, Oklahoma's 'reasonable expectations' doctrine does not apply in this case. Cactus has not alleged that the insuring agreement is ambiguous or that the policy's intentional injury exclusion is hidden or masked by technical or obscure language," the motion said.

National Union and Chartis added that even if the reasonable expectations doctrine applied, none of Cactus' asserted bases for a reasonable expectation of coverage has any merit.

"Cactus' alternative coverage argument that an employer can be held liable under Parret based on vicarious liability is contrary to Oklahoma law," the motion said.

The insurers also attacked Cactus' assertion that if coverage is not provided, it is still entitled to coverage because the insurers participated in the defense of the case up until it denied coverage, which allegedly was just before trial.

"National Union is not estopped from asserting its coverage defenses because it undisputedly did not assume Cactus's defense, and there are no alleged facts supporting a waiver," the motion said.

Cactus had also, in the alternative, asked for a refund of its premiums, alleging National Union fraudulently represented that its policies provided excess employers' liability coverage.

"Cactus' only asserted basis for its fraud/misrepresentation claim ... is incorrect, since the policy provides coverage for employer liability claims in other states in which Cactus operates," the motion said.

National Union and Chartis are represented by Darin L. Brooks and Kristen W. McDonald of Beirne Maynard & Parsons LLP and by William D. Perrine and Reagan L. Madison of Perrine Redemann Berry Taylor & Sloan PLLC.

Cactus is represented by Michael W. Huddleston and Devon D. Sharp of Munsch Hardt Kopf & Harr PC and by Reid E. Robison and Brandon L. Buchanan of McAfee & Taft PC.

The case is Cactus Drilling Co. v. National Union Fire Insurance Co. of Pittsburgh, Pa. et al., number 5:12-CV-00191 in the U.S. District Court for the Western District of Oklahoma.

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