

3rd Circ. Set To Decide If Asbestos Exclusion Is Enforceable

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The Third Circuit is set to hear oral arguments Friday on whether a common exclusion for asbestos-related claims in a Travelers insurance policy is ambiguous and therefore unenforceable in a case that could have a broad impact on insurers' liabilities for litigation over the toxic mineral. Here, Law360 reviews the history of the case in advance of the hearing.

What's at Stake

The Third Circuit has been asked to review a Pennsylvania district court's decision that Travelers Surety & Casualty Co. cannot enforce a policy exclusion for claims "arising out of asbestos" to deny coverage to policyholder General Refractories Co. for scores of lawsuits brought by plaintiffs who allege they were injured by exposure to asbestos contained in the company's fire-resistant industrial products.

The lower court held that the exclusion was ambiguous, and therefore unenforceable, because GRC had reasonably argued that the language of the exclusion applies only to asbestos in its raw form, not products incorporating the mineral.

A pair of insurance industry groups, the American Insurance Association and Complex Insurance Claims Litigation Association, warned in an amicus brief that the district court's ruling flouts the commonly accepted meaning of the term "asbestos" and could unfairly put insurers on the hook for asbestos injury claims that they clearly meant to exclude from coverage.

Moreover, the groups said, a decision by the Third Circuit affirming the lower court could give policyholders a foothold to challenge the enforcement of other unambiguous exclusions for risks tied to harmful substances.

“Asbestos exclusions are not the only exclusions that are tied to a known harmful substance. Such exclusions are designed to broadly bar coverage for all harms associated with that substance,” the insurance groups argued. “A decision by this court indicating that this is not the case could have seriously troubling implications for numerous other insurance provisions.”

On the other hand, nonprofit policyholder advocacy group United Policyholders said in its own amicus brief that the lower court’s decision was consistent with precedent requiring courts to resolve any ambiguities in policy language in favor of the insured.

“It is not for this court now — or for any court — to rewrite these policies to contain an exclusion i.e., an asbestos-containing products exclusion) which was available to Travelers but which Travelers chose not to incorporate in the policies,” United Policyholders contended.

An attorney for GRC and a Travelers spokesman did not immediately respond to requests for comment.

How We Got Here

GRC has been locked in a decadelong battle to obtain coverage from Travelers and its other insurance carriers for tens of thousands of claims brought by plaintiffs who say they were injured after being exposed to the company’s asbestos-containing products. The company previously settled with all the other insurers involved in the litigation.

The asbestos exclusion in the Travelers policies eliminates coverage for amounts that GRC becomes legally obligated to pay for injuries or loss arising out of asbestos.

Travelers contended that the exclusion is subject to only one reasonable interpretation — that claims for injuries related to asbestos in any form are excluded from coverage. GRC countered that the term “asbestos” plainly connotes the physical substance in its raw form, which the company did not produce.

During a November 2014 bench trial before U.S. District Judge L. Felipe Restrepo, GRC presented evidence indicating that it was standard practice in the insurance industry between the late 1970s and 1985 to distinguish between claims stemming from direct exposure to asbestos fibers and exposure to asbestos-containing products.

From 1978 to 1985, Travelers itself used a different asbestos exclusion in policies sold to other insureds, GRC asserted. That exclusion barred coverage for bodily injury arising out of asbestos, “whether or not the asbestos is airborne as a fiber or particle, contained in a product, carried on clothing or transmitted in any fashion whatsoever,” according to court papers.

In March 2015, Judge Restrepo found that GRC had set forth a reasonable interpretation of the asbestos exclusion, without ruling on which party’s interpretation was more reasonable. As such, the judge determined that the exclusion is ambiguous and must be construed in GRC’s favor.

After the district judge issued his ruling, GRC and Travelers decided to forgo a trial over damages and stipulated to cap the insurer’s potential payout at \$21 million. Judge Restrepo tacked on an additional \$15.3 million to that sum in September 2015, and Travelers appealed to the Third Circuit the following month.

Travelers’ Stance

The insurer contended in briefs filed with the appellate court that Judge Restrepo erred in applying a strict causation requirement between raw mineral asbestos and the injuries alleged in the suits against GRC.

Instead, Travelers said, Third Circuit and Pennsylvania Supreme Court precedent have firmly established that the phrase “arising out of” calls for the looser “but-for” causation standard. Applying that standard to GRC’s case, it is impossible to say that the underlying claims did not result from the inhalation of asbestos fibers in the company’s products, according to the insurer.

Furthermore, the lower court impermissibly narrowed the “unambiguously broad” term “asbestos” to encompass only the raw, relatively unprocessed form of the mineral, Travelers said.

“The Travelers exclusion precludes coverage for all injuries ‘arising out of asbestos,’ and does not further limit the term ‘asbestos,’” the insurer argued. “It was error for the district court to nonetheless interpret the exclusion to apply only to asbestos fibers released during the process of milling, mining and manufacturing raw mineral asbestos.”

GRC’s Stance

GRC shot back that its outside evidence of insurance industry customs and practices showed that asbestos exclusions broader than the one included in the Travelers policies existed in the marketplace back in the late 1970s and early 1980s.

According to GRC, if Travelers had intended to exclude coverage for claims related to all risks involving asbestos, including those “arising from asbestos-containing products,” the insurer would have included language to that effect in its policies.

“Because, under Pennsylvania law, Travelers was required but has failed to establish that its exclusion was clear, exact and unambiguous for the exclusion to be given effect, this court should affirm the district court’s ruling,” GRC contended.

Counsel

General Refractories is represented by Michael Conley and Meghan Finnerty of Offit Kurman and Howard J. Bashman of Law Offices of Howard J. Bashman.

Travelers is represented by Samuel Arena Jr., Daniel Fitch and William Mandia of Stradley Ronon Stevens & Young LLP and Theodore Boutrous Jr., Richard Doren, Blaine Evanson and Cameron Kistler of Gibson Dunn.

United Policyholders is represented by John N. Ellison and Lisa A. Szymanski of Reed Smith LLP and in-house counsel Amy Bach.

The insurance industry amici are represented by Laura Foggan of Wiley Rein LLP.

The case is General Refractories Co. v. First State Insurance Co., case number 15-3409, in the U.S. Court of Appeals for the Third Circuit.

-Editing Katherine Rautenberg and Catherine Sum.