Mama Jo's, Inc. v. Sparta Ins. Co.

Year: 2021
Court: United State Court of Appeals for the Eleventh Circuit
Case Number: 18-12887

In its brief, UP weighs in on whether the dust from a construction site adjacent to Mama Jo's resulted in "direct physical loss or damage to the property enough to trigger policy coverage. The summary of the argument is taken from the amicus:

"The issues that Mama Jo's raises in its petition present federal questions of national importance. The Eleventh Circuit below failed to adhere to two fundamental precepts of federal jurisprudence: the requirement that federal courts sitting in diversity apply the substantive law of the forum state and the right of civil litigants to a trial.

In its first error—the Erie error5—the Eleventh Circuit failed to make any genuine attempt to apply Florida policy-interpretation law and to predict how Florida courts would decide the coverage question. It ignored pertinent authority from Florida state courts and instead relied on federal authority and out-of- state cases.

In its second error—the Daubert error6—the Eleventh Circuit imposed the novel and erroneous requirements that causation experts categorically exclude all alternative causes and that they conduct strict scientific testing. This new standard usurps the role of the trier of fact.

Federal courts nationwide are making these same errors in cases seeking coverage for losses arising from the COVID-19 pandemic. These courts are making critical coverage decisions—in the context of motions to dismiss—without making serious efforts to determine and apply the coverage law of their forum states and predict how those states' courts would decide the issue. Instead, despite sometimes acknowledging their duty to apply state law, these federal courts are nevertheless determining coverage by following federal courts in other jurisdictions that have made the same Erie error. This amounts to the development of a federal general common law of insurance coverage, a result outlawed since 1938 when

Erie overruled Swift v. Tyson, 41 U.S. 1 (1842).

Federal courts are also usurping the role of the fact finder and inappropriately making factual determinations on motions to dismiss. Instead of applying the Twombly-Iqbal plausibility standard,7 federal courts are routinely disregarding factual allegations that COVID-19 causes direct physical loss of and/or damage to the insureds' property. By making factual determinations different from the allegations in a complaint, these courts are commandeering the jury's role.

The Eleventh Circuit's decision is perpetuating and deepening these errors. Its decision has led many federal courts to neglect Erie on an issue that is preeminently one of state law and regulation, and also to bypass their fundamental duty to leave factual questions to the trier of fact. The result is certain to be hundreds of thousands of additional small-business failures, loss of jobs, and pain for families across the country."

This brief was authored pro bono by Lorelie S. Masters of Hunton Andrews Kurth LLP