

R.T. Vanderbilt Co. v. Hartford Accident and Indemnity Co.

Year: 2015

Court: Connecticut Appellate Court

Case Number: AC36749

Where a business purchases insurance to cover specific risks (here asbestos) an insurer may not “pro-rate” its liability based on an exclusion, when additional, different insurance is not available, yet the insurance called upon to respond to a claim was purchased to cover that specific risk. Unless a business is “willfully underinsured” (as the insurers in this case claim) a condition of pro-ration must be a decision by the policyholder. A policyholder can only insure against risks for which insurance companies allow it to purchase insurance. In addition, UP argued, the availability of “claims made” policies (in which the coverage will only be extended for claims brought against the business within the policy period) is irrelevant when an “occurrence based” policy (as here) should respond to the claim. UP reminded the court that Connecticut is an “all-sums” (joint and several liability) jurisdiction and thus the policyholder could not be deemed self-insured for the period at issue. UPdate March 7, 2017: The Connecticut Appellate Court, as a matter of first impression ruled partially in favor of plaintiffs, holding that state law allows for a so-called “unavailability of insurance” rule, which states that a policyholder is not liable for a prorated share of defense and indemnity costs for periods during which insurance for a certain risk is unavailable in the marketplace...if a policyholder has been diligent in its efforts to maintain a continuous stream of coverage, then it may reasonably expect that it will be able to avail itself fully of such coverage in the event that unforeseen and ongoing injuries arise. (see: <https://www.law360.com/articles/898453/vanderbilt-needn-t-fill-asbestos-coverage-gaps-conn-court>). The Court, however, adopted a broader interpretation of the occupational disease exclusion which may bar claims from employees and independent contractors. See opinion below.

UP's brief was authored pro bono by Edward J. Stein, Esq. and John M. Leonard, Esq. of Anderson Kill, P.C. Of counsel: UP Executive Director Amy Bach, Esq.

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