

The Babcock and Wilcox Company, et al. v. American Nuclear Insurers, et al.

Year: 2014

Court: Pennsylvania Supreme Court

Case Number: 2 WAP 2014

In an issue of first impression, the Pennsylvania Supreme Court considered whether an insured can recover reasonable settlement amounts if the insurer refuses to consent to settlement, in cases where the insurer defends its insured under a reservation of rights. UP argued in its brief that while there is no clear precedent, Pennsylvania law should allow an insured to settle litigation against it when its insurer is defending under a reservation of rights and then to recover reasonable settlement amounts paid to settle covered claims within the policy limits. In other words, insurers should not be allowed to deny payment for covered claims when the insured settles for less than the policy limit. Specifically, UP argued that Pennsylvania law should reach this result on account of a variety of obligations of the insurer, including: a paramount duty to defend its insured; an independent duty to provide a defense to its insured; a fiduciary duty to conduct such a defense in the best interests of the insured; and the insured's parallel duty to cooperate in the defense so the insurer's interests are not prejudiced. This balanced approach protects an insurer's right to preserve and raise its defenses, maintain control over the litigation, and to deny payment of unreasonable settlements, while protecting an insured from the risk of non-coverage or an excess judgment by entering into a reasonable settlement. UP joined amici Dravo Corporation, E.W. Bowman, Inc., Hajoca Corporation, Kennametal, Matthews International, Mine Safety Appliances, Saint Joseph's University, Sylvan Incorporated, and Trumbull Corporation in its brief. UPdate 7/21/15: The Pennsylvania Supreme Court issued its decision adopting UP's "reasonable settlement" standard that allows insureds to enter into a reasonable settlement without forfeiting coverage. "Amici Curiae supporting Insureds note that the...fair and reasonable standard provides a corollary to the...bad faith standard, observing that... in cases involv[ing] the grant of damages in excess of policy limits, where an insured abided by an insurer's bad faith refusal to settle, the...fair and reasonable standard properly imposes only settlement costs up to the policy limits, where an insured agrees to a fair and reasonable

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settlement over the insurer's objection, without any need to demonstrate the insurer's bad faith."The decision permits policyholders to enter into a reasonable settlement over the insurer's objection, rather than risk a substantial and adverse verdict at trial, without forfeiting coverage. At the same time, it allows insurers to contest coverage for a settlement that is unreasonable or one that is not covered under the terms of the policy. The court's "reasonable settlement" standard is a strong and fair statement of Pennsylvania law that protects and preserves policyholders' rights and interests at the critical settlement stage of underlying litigation. For a summary click [here](#).

UP's brief was authored pro bono by John Ellison, Esq., Jay Levin, Esq., James Martin, Esq., and Traci Rea, Esq. of Reed Smith LLP

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