Thomson, Inc. et al. v. XL Insurance, Inc. et al.

Year: 2014
Court: Indiana Supreme Court
Case Number: 49A05-1109-PL-470

On appeal from a decision in error by the Indiana Court of Appeal, UP argued in its brief that the presumptive rule in determining the scope of coverage under a Commercial General Liability Policy ("CGL") should be "all-sums" or joint and several liability. For "long-tail" environmental claims, the burden should be on the insurer, not the insured, to determine which of multiple policies applies once one policy has been triggered. UP reminded the Court that this approach is supported by many state courts and insurance industry CGL drafting history confirms the same. In addition, UP argued that the position advanced by the carrier (that the term "those sums" present in the CGL policy at issue was distinct from "all sums") was a distinction without a difference. Insurers may not rewrite an insurance contract after it is entered into or read terms into the contract which are not there.

UP's brief was authored pro bono by Kevin M. Toner, Esq. and Jon Laramore, Esq. of Faegre Baker Daniels, LLP with contributions from Philip Levitz, Esq. of Covington and Burling, UP Executive Director Amy Bach, Esq. and Staff Attorney Dan Wade, Esq.