

Third Circuit Holds Insurer's Interpretation of Employer's Liability Exclusion is Fairly Debatable

A recent 3rd Circuit decision, *ArcelorMittal Plate, LLC v. Joulé Technical Services, Inc.*, 558 Fed.Appx. 205 (3d Cir. 2014) reiterates that under New Jersey law, an insurer does not act in bad faith when denying a claim that is “fairly debatable.” Although the court disagreed with the insurer’s application of the policy’s employer’s liability exclusion to preclude coverage, it also held that there was no basis to impose bad faith liability on the insurer.

ArcelorMittal Plate, LLC’s (AMP) owns and operates a steel production plant in Conshohocken, Pa. The underlying action in *ArcelorMittal Plate* arose out of a 2008 incident in which an employee of a maintenance company sustained a personal injury while performing work at AMP’s plant.

In 2005, AMP contracted with Joulé Technical Services, Inc. (Joulé), an industrial engineering and staffing firm, for the performance of maintenance and repair work at AMP’s Conshohocken facility. The terms and conditions of the contractor agreement required Joulé to obtain a commercial general liability policy (CGL policy) naming AMP as an additional insured “for all claims including, but not limited to, claims by [Joulé’s] employees.” Joulé obtained a CGL policy from Liberty Surplus Insurance Corporation (insurer). The CGL policy was subject to an employee exclusion, which stated that “[t]his insurance does not apply to ... ‘[b]odily injury’ to (1) [a]n ‘employee’ of the insured arising out of and in the course of (a) [e]mployment by the insured; or (b) [p]erforming duties related to the conduct of the insured’s business[.]” *Id.* at 207.

In 2009, the injured employee and his wife filed suit against AMP in the Court of Common Pleas of Philadelphia County. AMP tendered the defense to Joulé who, in turn, tendered the defense to the insurer, through its insurance broker. The insurer denied coverage on the basis that there was no contract between AMP and Joulé for the date of loss of the incident.

In the ensuing coverage litigation, AMP named as defendants Joulé, the insurer and Genatt Associates, Inc., Joulé’s insurance broker. AMP’s amended complaint referred to the contractor agreement as the basis for its breach of contract claims. As against the insurer, AMP sought to recover for breach of contract and bad faith denial of coverage. In December 2012, the U.S. District Court for the Eastern District of Pennsylvania granted judgment against AMP on all claims.

On appeal, the court identified the central issue as whether the employee exclusion in the CGL policy barred coverage for the employee’s underlying claim. AMP argued that New Jersey law governed the interpretation of the policy and that under New Jersey law, the employee exclusion did not bar coverage for a lawsuit brought against one insured by a different insured’s employee. The insurer argued that Pennsylvania law controlled and required the opposite result.

Applying Pennsylvania choice of law rules, the 3rd Circuit held that New Jersey law applied because the named insured was a New Jersey entity and the policy was negotiated and delivered in New Jersey. Additionally, the court reasoned that the narrow application of the employee exclusion under New Jersey law furthered that state’s “interest in providing the broadest coverage possible for an insured.” *Id.* at 211, n.4

The 3rd Circuit reversed the lower court’s ruling in favor of the insurer and held that, pursuant to New Jersey law, the employer’s liability exclusion did not bar AMP’s claim for coverage. Citing to the policy’s severability clause, the court noted that the employee exclusion referred to “*the* insured,” as opposed to “*an* insured” or “*any* insured.” On this reasoning, the court held that the exclusion should be read to refer only to the insured making the claim – in this case, AMP, because the exclusion contained “a specific, exclusive reference to a *particular* insured, rather than a general, inclusive reference to all insureds.” *Id.* at 210 (emphasis added). In other words, the



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court held that the employee exclusion did not bar AMP's claim for coverage as to a lawsuit brought by a Joulé employee.

However, the 3rd Circuit affirmed the lower court's ruling on AMP's claim for bad faith denial of coverage. The court noted that to prevail on a bad faith claim in New Jersey, "a plaintiff must show the absence of a reasonable basis for denying benefits of the policy and the defendant's knowledge or reckless disregard of the lack of a reasonable basis for denying the claim." *Id.* at 213. The court cited New Jersey case law holding that a claim that is "fairly debatable" will not support a finding of bad faith denial of coverage. *Id.* The 3rd Circuit determined that whether the employee exclusion bars AMP's claim presented a legal issue that was at the least fairly debatable, particularly in light of the relevant Pennsylvania case law.

This ruling highlights the importance of documenting the insurer's reasoned analysis in support of its coverage determination. By ruling that the insurer acted in good faith despite its incorrect denial of coverage, the court illustrated the application of New Jersey's fair rule — an insurer will not be slapped with bad faith liability for denying a claim that was subject to reasonable debate.

To discuss any questions you may have regarding the issues discussed in this Alert, or how they may apply to your particular circumstances, please contact Abby Sher at asher@cozen.com or (215) 665-2761.