

New Jersey Supreme Court Holds New York Counties Exclusion Is Enforceable

In Norman International, Inc. v. Admiral Insurance Company, the New Jersey Supreme Court ruled that a New York Counties Exclusion in a commercial general liability (“CGL”) policy is valid and enforceable. The New York Counties Exclusion excluded coverage for bodily injury and property damage “arising out of, related to, caused by, contributed to by, or in any way connected with” the insured’s operations performed in certain New York State counties, including Nassau County. In so ruling, the Supreme Court held that the language of the New York Counties Exclusion did not require a causal relationship between the insured’s activities and the tort claimant’s injuries but only a connection between the insured’s activities and the injuries complained of. Further, because the trial in the underlying action would not resolve the coverage issue, the duty to defend turned on facts beyond the allegations contained in the underlying tort complaint.

The insured sold blinds to Home Depot, whose employees used a cutting machine that the insured supplied and maintained to cut the blinds to the lengths desired by Home Depot’s customers. The underlying action involved a Home Depot employee who worked in Nassau County and who severed parts of her fingers while using the insured’s machine to cut window blinds for a customer.

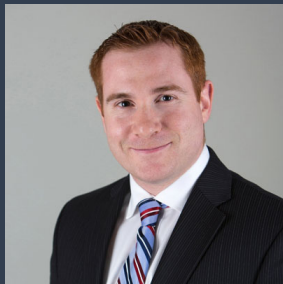
The injured worker sued the insured under a theory of product liability. Admiral denied coverage for the suit under the New York Counties Exclusion. The insured filed a declaratory judgment action in the Superior Court of New Jersey, seeking a declaration of coverage. The Law Division granted summary judgment to Admiral, ruling that the New York Counties Exclusion applied. The Appellate Division reversed, ruling that the New York Counties Exclusion did not apply because the insured’s activities had no causal relationship to the injured worker’s allegations or causes of action.

The Supreme Court reversed. It stated that the duty to defend is normally decided by comparing the allegations of the complaint to terms of the insurance policy. However, when the issue of coverage will not be decided by the trial of the underlying tort action, the court must consider facts outside of the injured claimant’s complaint. In such a case, the court should specify that its coverage analysis includes facts outside of the complaint that are necessary to determine the duty to defend. Next, the Supreme Court ruled that the terms “related to” and “in any way connected with” are interpreted broadly and do not require a showing of causation. Instead, they require only that the insured’s acts and the claimant’s injuries be “linked in some way, even if they are only tangentially related.” The Court also ruled that the New York Counties Exclusion’s use of the term “or” in a list of coverage phrases separated by commas meant that the exclusion is triggered if at least one of the coverage phrases is satisfied. Because the insured’s activities were connected to the claimant’s injuries, the New York Counties Exclusion barred coverage. The Supreme Court therefore ruled that Admiral had no duty to defend the insured in the bodily-injury action. In so ruling, the Supreme Court relied on facts obtained through discovery in the declaratory-judgment action that were not part of the complaint, such as the insured’s regular maintenance of the cutting machine and its training of Home Depot employees to use its machine.

If you would like more information on this decision or on insurance coverage issues generally, please do not hesitate to call Justin Kinney, Mike Chuven, or Tim Smith



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