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Eleventh Circuit Sorts Out “Mess” Involving Consent To Settle and Florida Sovereign Immunity Statute

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The insured, a county in Florida, and personal representative of deceased accident victim’s estate brought a declaratory judgment action against the County’s excess insurer seeking a declaration the County was allowed to settle the personal representative’s underlying wrongful death claim without the excess insurer’s consent and without the Florida legislature passing a special claims bill. The Eleventh Circuit, affirmed in part, vacated in part, and remanded the district court’s decision. The Eleventh Circuit found the frustration of purpose doctrine did not apply to allow the insured County to satisfy its self-insured retention limit, which exceeded the statutory sovereign immunity cap. Also, the sovereign immunity statute did not allow the insured County to settle the claim without the insurer’s consent given the language in the excess insurance policy. Finally, fact issues precluded summary judgment whether the excess insurer acted in bad faith in refusing to consent to the insured County’s proposed settlement with the personal representative in the wrongful death lawsuit.

Hillsborough County, et al. v. Star Insurance Company

The decedent died from injuries sustained in an automobile accident with a Hillsborough County, Florida employee. The personal representative of the decedent’s estate filed a wrongful death suit against the County. However, the insured County filed a separate declaratory judgment action in federal court to determine whether the County and the personal representative could settle for $2.35M with the County paying its self-insured retention limit (SIR) of $350,000.00 and the excess insurer paying the remaining $2M (the policy limits) – without the excess insurer’s consent, but subject to the Florida legislature approving a special claims bill for the $150,000.00 “gap” between the $200,000.00 statutory sovereign immunity cap and the $350,000.00 SIR.

In the district court, the parties, without the benefit of any discovery, filed cross-motions for summary judgment. The district court held any requirement the Florida legislature pass a claims bill for the "gap" amount before coverage is triggered under the excess policy frustrates the purpose of the insured County's contract with its excess insurer. However, the district court also held the insured County could not unilaterally settle the estate's claim for an amount within the policy limits without its excess insurer's consent. Said another way, the district court found if the insurer should consent to the settlement, then the County could satisfy its SIR without a claims bill by the Florida legislature.

However, the Eleventh Circuit found the frustration of purpose doctrine under Florida law did not apply. Under Florida law, the doctrine refers to a condition surrounding the contracting parties where one of the parties finds that the purpose for which it bargained, and which purposes were known to the other party, had been frustrated because of the failure of consideration or impossibility of performance by the other party. However, this doctrine does not apply if knowledge of the facts making performance impossible was available to the party making the promise.

In this case, it is true that the County itself cannot pass a special claims bill for the "gap" amount of the $150,000.00 which would allow it to satisfy its SIR and trigger coverage under the excess policy. However, the frustration of purpose doctrine does not obliterate the $350,000.00 SIR. Both the County and the excess insurer knew (or should have known) of the established sovereign immunity cap of $200,000.00 for municipalities and other government entities. Therefore, both the County and the excess insurer knew the $350,000.00 SIR exceeded the $200,000.00 sovereign immunity cap. Because the County purchased excess insurance of $2M, the parties were aware of (or certainly should have foreseen) circumstances where the County could be liable for an amount over $350,000.00, in which case the $150,000.00 "gap" amount would have to be accounted for in some way or another (e.g., through the passage of the special claims bill by the Florida legislature).

Because the record was devoid of any evidence regarding the understanding or beliefs of the County or the excess insurer regarding how the $350,000.00 SIR would apply in light of the sovereign immunity statute, the Eleventh Circuit held the district court should not have applied the frustration of purpose doctrine.

The Eleventh Circuit agreed with the district court, however, in finding the excess insurer did need to consent to the settlement. The County argued it did not need its excess insurer to agree to the proposed settlement and claimed it could settle with the estate for an amount within the policy limits without the excess insurer's approval. The County contended Florida's sovereign immunity cap statute superseded the excess policy's consent requirement .

Comparing the sovereign immunity statute and excess policy, the Eleventh Circuit found there was no contradiction between the statute and the excess policy's consent requirement. The use of the words "insurance coverage" in the statute indicated a party must look to the terms of the policy to determine what is covered. Here, the excess policy clearly requires the excess insurer's consent to any settlement that would trigger coverage. Also, if the County's position was correct, then a government entity could, notwithstanding the policy language, unilaterally agree to settle a claim on terms that are unjustified or unreasonable and thereby put the insurer on the hook for the settlement.

The Eleventh Circuit was quick to caution, however, insurers (like the excess insurer in this case) cannot arbitrarily veto or withhold consent from any settlement within policy limits. Under Florida law, the excess insurer has a duty of good faith to evaluate settlement proposals and cannot "arbitrarily reject a reasonable settlement offer." Based upon the record, the Eleventh Circuit agreed with the district court there were a number of material factual issues not ripe for resolution.

The Court was critical of the parties for failing to conduct discovery, and therefore, failing to present critical evidence to the district court regarding the accident and the proposed settlement. For instance, there was no evidence who was at fault for the accident that resulted in the death, or what reasonable inferences might be drawn on the issues of fault, or the age, or earning capacity of the decedent, or the way that likely damages under Florida wrongful death law were calculated by the County and the estate in arriving at their proposed settlement amount. Moreover, there was no evidence why the County feared (or expected) a Judgment in excess of the $350,000.00 SIR if the case went to trial.

The Eleventh Circuit candidly referred to the factual background and procedural posture of this case as a "mess," and it seemed to be an apt description. Apparently the parties represented very early on discovery was not needed, but the Eleventh Circuit was critical of the parties for not engaging in discovery before filing their respective summary judgment motions. If discovery was conducted, it may have provided a clearer path for the Eleventh Circuit (or the district court in the first place) to find the excess insurer acted in good faith in refusing to consent and/or the County and the estate acted in bad faith in arriving at the proposed settlement.