

Supreme Court of Delaware Reforms Release of Duty to Defend Based on Mutual Mistake

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On January 5, in *Clariant Corp. v. Harford Mut. Ins. Co.*, 2011 WL 18351, the Supreme Court of Delaware ruled that even when a settlement and release of a party's duty to defend and/or indemnify is entirely unambiguous, courts may reform the settlement and release to comport with the parties' true contractual intent.

Background

Parties executing a settlement and release in relation to a duty to defend and/or indemnify strive to make the document as unambiguous as possible so that it will not be subject to court reformation. However, what happens when the release is unambiguous, yet clearly does not reflect the true intention of the parties? This was the situation in *Clariant*.

Clariant Corporation occupied an industrial building owned by Mill-Pond Properties pursuant to a lease under which Clariant agreed to indemnify and defend Mill-Pond for any lawsuit alleging damage caused by Clariant's negligence; both parties carried insurance related to the industrial building. After a Clariant employee was injured due to an alleged failure to maintain the building in working repair, the employee filed suit against Mill-Pond, but when Clariant and its insurer refused to defend or indemnify Mill-Pond in the underlying action, Mill-Pond and its insurer filed a declaratory judgment against Clariant and its insurer.

After the declaratory action was filed, however, Clariant's insurer agreed to defend and indemnify Mill-Pond. Thereafter, the parties executed a broad settlement and release absolving Clariant and its insurer from its obligations related to the underlying action in exchange for Clariant's payment of \$6,500.

Despite the release, Clariant's insurer continued to defend the underlying action until the injured employee amended his complaint to include an allegation of negligence based on a latent defect at the industrial plant. At that point, Clariant submitted a letter to Mill-Pond stating that it was no longer willing to defend the lawsuit; according to Clariant and its insurer, the new allegations made Mill-Pond and its insurer responsible for the alleged injury under the lease controlling the parties' relationship. Thereafter, Mill-Pond and its insurer brought another declaratory action against Clariant and its insurer.

The Superior Court of Delaware ruled that, while the release was valid and enforceable, it was ambiguous and thus did not relieve Clariant and its insurer of the obligation to defend and/or indemnify

Mill-Pond and its insurer.

The Delaware Supreme Court Decision

While agreeing with the Superior Court’s ultimate decision that Clariant and its insurer had a duty to defend and indemnify Mill-Pond in the underlying action, the Supreme Court of Delaware found the “broad” release to be unambiguous. Nonetheless, the court found the release to be a result of a mutual mistake by both parties, noting that “neither party seems to have focused on what they were signing.” The court found that “the language of the Release, although clear as can be, did not reflect the parties’ agreement,” which instead was intended to extinguish only claims for attorneys’ fees or other costs incurred by Mill-Pond before Clariant assumed defense of the underlying action. Therefore, the court reformed the contract “to conform to the parties’ true, and clearly evidenced, contractual intent.”

Implications

This ruling is a reminder to insureds to take care to scrutinize the language used in a release to ensure that it reflects both parties’ intent. Even if the language is “clear as can be,” courts are generally free to reform the release to comport with what they feel is the parties’ collective intention, if ascertainable.

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