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4th Circ. Upholds Insurers' Win In Asbestos Coverage Row

By **Jeff Sistrunk**

Law360 (March 26, 2018, 8:43 PM EDT) -- The Fourth Circuit on Monday upheld a Maryland federal court's ruling that two insurance companies have no further duty to cover insulation firm Walter E. Campbell Co. Inc.'s costs to defend and settle asbestos injury claims, saying the lower court properly followed precedent in interpreting key policy language limiting the insurers' obligations.

In a 25-page published opinion, a unanimous panel of the appeals court affirmed Senior U.S. District Judge William M. Nickerson's decision granting summary judgment to St. Paul Fire and Marine Insurance Co. and U.S. Fire Insurance Co., which had issued WECCO a series of primary and umbrella liability policies from 1975 through 1983.

Since the mid-1980s, WECCO has been hit with hundreds of lawsuits by individuals who were allegedly injured through exposure to the company's asbestos-containing insulation materials, which it ceased selling and using in 1972, according to court papers.

Both St. Paul and U.S. Fire took the position that they have already depleted the aggregate limits of all their policies by paying WECCO's costs in connection with "completed-operations hazard" claims — that is, injury claims stemming from individuals' exposure to asbestos during WECCO operations that were finished by the time the policies went into effect.

WECCO, meanwhile, asserted that the insurance companies had mischaracterized a number of settled claims as completed-operations claims in order to prematurely exhaust the policies' aggregate limits. But Judge Nickerson, following the Fourth Circuit's precedential 2004 decision in the case of *In re: Wallace & Gale Co.*, agreed with the insurers' reading of the completed-operations language.

In Monday's opinion, the Fourth Circuit panel said the district judge had made the right call on that point and several others, rejecting WECCO's efforts to avert the Wallace & Gale decision.

"In sum, we see no reason to depart from Wallace & Gale's clear and controlling interpretation of the completed-operations hazard," U.S. Circuit Judge James A. Wynn Jr. wrote for the panel. "Accordingly, we conclude that the district court correctly declared that any bodily injury claim based on an injury that occurred during a WECCO operation that completed prior to the start of a policy falls within the completed-operations hazard of that policy."

According to court documents, each of St. Paul's and U.S. Fire's policies sets an aggregate limit on coverage for completed-operations hazard claims and claims of injuries or property

damage attributed to WECCO's products after they have left the company's hands, according to court documents. On the other hand, so-called "operations claims" — claims that don't fit the completed-operations or products hazard categories — are not subject to the policies' aggregate limits, court papers say.

St. Paul and U.S. Fire have said their obligations to WECCO ended once they had paid out their policies' total aggregate limits of \$32 million and \$6.3 million, respectively.

From 2015 to 2017, Judge Nickerson issued several decisions favoring the insurers. In May 2015, he adopted Wallace & Gale's reasoning and found that any injury claims brought by individuals first exposed to asbestos during WECCO operations that wrapped up prior to a given policy's effective date would be deemed completed-operations claims.

Then, in March 2017, Judge Nickerson found that the aggregate limits of St. Paul's policies had been exhausted by the insurer's payments on a number of completed-operations claims on WECCO's behalf. The judge further held that the majority of WECCO's breach-of-contract claims against St. Paul, and all of its breach-of-contract claims against U.S. Fire, are time-barred.

On appeal, WECCO contended that the district judge misconstrued the policies' completed-operations hazard language. According to the insulation company, claims resulting from individuals' exposure to asbestos during any of WECCO's operations should fall outside of the policies' aggregate limits, regardless of when those operations ended.

The Fourth Circuit panel was unconvinced, saying that WECCO's arguments amount to an attempt to "re-litigate" the Wallace & Gale case. Given the fact that all of WECCO's operations involving asbestos-containing materials predated the policies, Judge Nickerson properly classified the claims at issue as completed-operations claims subject to the St. Paul policies' aggregate limits, the panel held.

"Accordingly, we need not — and thus do not — decide whether an allegation of asbestos exposure during post-1972 WECCO operations gives rise to a completed-operations or operations claim under the terms of the policies," Judge Wynn wrote. "Therefore, we agree with the district court that the undisputed evidence in the record establishes that St. Paul properly classified the claims at issue as completed-operations claims."

The appellate panel also agreed with Judge Nickerson that the bulk of WECCO's breach-of-contract claims against the insurance carriers are time-barred, because the company failed to file them within the applicable three-year window after learning of the insurers' alleged strategy to improperly classify claims.

"Here, WECCO was aware of the way in which the Insurers were classifying the claims they paid on behalf of WECCO since at least 2003 (with respect to the primary policies issued to WECCO) and 2009 (with respect to U.S. Fire's umbrella policies)," Judge Wynn wrote. "Accordingly, we agree with the district court's conclusion that most of WECCO's breach-of-contract claims are barred by the applicable statute of limitations."

Attorneys for WECCO and the insurers did not immediately respond to requests for comment Monday.

U.S. Circuit Judges James A. Wynn Jr., G. Steven Agee and J. Harvie Wilkinson III sat on the Fourth Circuit panel.

WECCO is represented by Bryan Michael Killian, Jeffrey S. Raskin and William B. Nes of Morgan Lewis Bockius LLP.

The insurers are represented by Harry Lee and Catherine Cockerham of Steptoe & Johnson

LLP and by William P. Shelley and Jacob E. Cohn of Gordon & Rees Scully Mansukhani LLP.

The case is *The Walter E. Campbell Co. Inc. v. United States Fire Insurance Co. et al.*, case number 17-1585, in the U.S. Court of Appeals for the Fourth Circuit.

--Editing by Jill Coffey.

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