

Jan 03 2013

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Practice Area: Insurance Coverage and Risk Management

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In *Phillips v. Parmelee*, 2012 WL 6115985, the Wisconsin Court of Appeals upheld the validity of an asbestos exclusion.

In 2006, Scott Parmelee sold an apartment building to Michael Phillips that was covered by an American Family business owners policy. Prior to selling the building to Phillips, Parmelee received a property inspection report noting the probable presence of asbestos. Phillips claimed that Parmelee never put him on notice that the property probably contained asbestos.

In 2007, a contractor hired by Phillips discovered asbestos at the property when attempting to remove insulated pipes. As a result of the discovery of asbestos, Phillips allegedly suffered serious financial problems that led to the foreclosure of the property and others owned by Phillips.

In November 2010, Phillips sued Parmelee seeking damages for breach of contract/warranty, a violation of Wis. Stat. §§ 895.446 and 943.20, negligence and punitive damages. American Family filed a motion to intervene, bifurcate and stay the proceeding, as well as filing a counterclaim and cross-claim for declaratory judgment. The trial court granted the motion for declaratory judgment due to the policy's asbestos exclusion. Phillips appealed.

In analyzing the policy, the appellate court found that there was an "occurrence" and "property damage" as defined by the American Family policy. Thus, an initial grant of coverage existed. However, the American Family policy contained an asbestos exclusion that stated the policy did not apply to "property damage" with respect to "any loss arising out of, resulting from, caused by, or contributed to in whole or in part by asbestos, exposure to asbestos, or the use of asbestos."

Phillips attempted to get around the asbestos exclusion by arguing that the exclusion was ambiguous and that the complaint alleged claims not related to asbestos. Phillips argued that the exclusion was ambiguous for two reasons. First, the exclusion did not contain mention of the words "accidental dispersal or mere presence." Second, the exclusion failed to take into account what form of asbestos was being excluded. Phillips also argued that the asbestos exclusion did not apply to all claims because the complaint alleged damages beyond those related to asbestos (e.g. negligent failure to disclose).

The Court dismissed Phillips' arguments and held that the asbestos exclusion in the American Family policy clearly and unambiguously excluded the alleged property damage. Specifically, the Court stated that "the policy language is clear that if any part of any loss is caused in any way by asbestos, the policy provides no coverage." Moreover, the fact that several allegations against Parmelee were characterized in the complaint as negligence was irrelevant because all alleged damages arose out of the existence of asbestos in the apartment building. As a result of the asbestos exclusion, American Family had no duty to defend or indemnify Parmelee.

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