

Pella Prevails In Coverage Dispute With Liberty Mutual

By **Ryan Boysen**

Law360, New York (January 18, 2018, 9:33 PM EST) -- An Iowa federal court has ruled that Liberty Mutual Insurance Co. must foot the bill for Pella Corp.'s defense as the window maker fights dozens of product liability claims, a decision that ends one phase of the companies' contentious dispute and potentially unlocks millions in coverage for Pella.

In granting partial summary judgment to Pella on Tuesday, U.S. District Judge James E. Gritzner found that the insurer's obligation to pay Pella's defense costs was triggered on the date of installation of the allegedly faulty windows, regardless of when the purported damage they caused actually occurred.

That opens up coverage under each of the successive commercial general liability policies Pella held with the insurer from 2000 to 2008. Liberty Mutual had argued it was too soon to rule on its defense obligations, since the underlying suits don't allege when the damage actually occurred, but Judge Gritzner sided with Pella in rejecting that argument.

"Liberty argues that the facts highlighted by Pella fail to shed light on when damages actually or potentially occurred," Judge Gritzner wrote. "But this is wrong; facts such as when the products at issue were installed, or when the structure containing the products was completed, do shed light on when damage may potentially have occurred."

Judge Gritzner added that in order to defeat Pella's motion for summary judgment, which asked the court to clarify the policies that had been triggered, Liberty Mutual would have had to prove certain underlying suits couldn't have been covered under certain policies.

"Liberty has failed to do this," he said.

Judge Gritzner's opinion covered only defense costs. It's likely the issue of indemnification could go all the way to trial.

The ruling is just the latest in a string of setbacks for Liberty Mutual in the coverage dispute, with Judge Gritzner ruling in March that each of 15 "sample claim" suits constitutes a separate occurrence under the policies.

The sample claims are some of the highest-stakes suits among the thicket of litigation Pella is embroiled in, and they are being used to determine broader issues of coverage in the insurance spat.

Judge Gritzner also found that each of the policies was potentially on the hook for its full amount for defense costs, but that indemnification costs would be paid on a piecemeal, pro rata basis by each policy triggered.

In addition to the commercial general liability policies Pella held with Liberty Mutual from 2000 to 2008, the window maker also had a parallel policy for each year called an “aggregate self-insured retention policy.”

Each of the CGL policies requires Pella to pay a SIR — which functions like a deductible — before the policy begins to pay out, but the aggregate SIR policy covers those SIR payments once they reach a certain cap.

The structure is complex, but the upshot is that Pella is potentially entitled to \$2 million per year under the CGL policies and \$20 million per year under the aggregate SIR policies. Tuesday’s ruling and Judge Gritzner’s decisions in March mean that Pella can start tapping into that coverage to pay for its defense of the underlying suits, barring an appeal or some other legal barrier thrown up by Liberty Mutual.

The policies did not require Liberty Mutual to defend Pella itself, only to pay the company’s defense costs.

Pella kicked off the litigation in 2011, when it sued Liberty Mutual to seek a determination that more than 100 claims for property damage resulting from the company’s allegedly defective windows and doors fell within the scope of the policies.

Representatives for Pella declined to comment Thursday. Liberty Mutual did not respond to a request for comment.

Liberty Mutual is represented by Jeffrey C. Gerish, Charles W. Browning and Maryanne B. Foster of Plunkett Cooney and Robert V.P. Waterman Jr. of Lane & Waterman LLP.

Pella is represented by Keith McKenna, Robin L. Cohen and Marc T. Ladd of McKool Smith PC and Richard W. Lozier Jr. of Belin McCormick PC.

The case is Pella Corp. et al. v. Liberty Mutual Insurance Co., case number 4:11-cv-00273, in the U.S. District Court for the Southern District of Iowa, Central Division.

--Editing by Jill Coffey.