

AIG Unit Loses Bid To Limit Excess Asbestos Coverage

By Jeff Sistrunk

Law360, New York (September 27, 2016, 5:04 PM EDT) -- The Connecticut federal judge overseeing a sprawling dispute over coverage for asbestos-related claims against plumbing supply company P.E. O'Hair & Co. refused to find Monday that the limits of an American International Group insurer's excess policy are reduced by payments made by other excess carriers.

Senior U.S. District Judge Warren W. Eginton denied AIG unit National Union Fire Insurance Co. of Pittsburgh, Pa.'s motion for summary judgment while granting O'Hair successor Ferguson Enterprises Inc.'s competing motion. The judge rejected National Union's contention that the \$5 million limits of the excess policy it issued to O'Hair can be eroded by prior payments made by two of the company's other excess carriers.

Instead, the judge said the so-called "other insurance" clause in the National Union excess policy could be reasonably read to say that the policy limits are only reduced by payments made under prior excess policies also issued by National Union, as opposed to other insurers. National Union did not issue any other excess policies to O'Hair during the relevant time period.

"[T]he court is not persuaded that National Union has 'virtually nil' chance to escape its indemnity obligation if its liability limit is eroded by coverage provided by prior non-National Union-issued excess policies," Judge Eginton wrote.

The coverage battle dates back to June 2012, when another of O'Hair's excess insurers, New England Reinsurance Co., filed suit seeking a ruling determining the obligations of more than a dozen insurance companies to defend and indemnify the plumbing supply company in hundreds of asbestos-related lawsuits.

Following an extensive settlement conference earlier this year, the parties have "nearly settled" the dispute, according to Judge Eginton's decision. However, Ferguson and National Union both sought summary judgment regarding the proper application of the "other insurance" clause in the National Union excess policy, which covered a period from March 1978 to January 1979.

The clause states that if any loss covered under the policy is also covered in whole or in part by any other excess policy previously issued to O'Hair, National Union's limits "shall be reduced by any amounts due to the insured on account of such loss under such prior insurance," according to court documents.

National Union argued that the provision indicates its policy limits must be reduced by payments made

to O'Hair by Federal Insurance Co. and the Insurance Co. of the State of Pennsylvania, which had previously issued excess policies to the company.

But Ferguson asserted that National Union's interpretation would allow the carrier to escape its indemnity obligations entirely. Furthermore, Ferguson contended, the clause is ambiguous and could be reasonably construed to encompass only previously issued National Union excess policies.

Judge Eginton sided with Ferguson on Monday, finding that the "other insurance" clause is ambiguous and must therefore be construed in the policyholder's favor. The judge also noted that California law, which applies to the case, disfavors the enforcement of policy terms "that would leave an insured 'stranded' without coverage."

"The clause is enforceable as ensuring coverage if the phrase 'any other excess policy' is construed to include only other prior excess policies issued by the same insurer, or as in this case, National Union," the judge wrote.

Representatives of Ferguson and National Union did not immediately respond to requests for comment Tuesday.

Ferguson is represented by Jeffrey L. Schulman of Liner LLP and by Jared Zola of Blank Rome LLP.

National Union is represented by John R. Felice and Kevin J. O'Connor of Hermes Netburn O'Connor & Spearing PC.

The case is New England Reinsurance Corp. v. Ferguson Enterprises Inc. et al., case number 3:12-cv-00948, in the U.S. District Court for the District of Connecticut.

--Editing by Catherine Sum.