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FCCI Insurance Company v. Horn,

(Released by Fl. Fifth District Court of Appeal, Dec. 10, 2004),

INSURER MUST DEFEND OR INDEMNIFY INSURED WHEN IT IS ALLEGED IN WRONGFUL DEATH ACTION THAT INSURED ENGAGED IN CONDUCT "SUBSTANTIALLY CERTAIN TO RESULT IN SERIOUS INJURY OR DEATH" DID NOT ALLEGE THAT EMPLOYER INTENDED TO CAUSE HARM.

The families of workers killed in a construction accident filed wrongful death actions against the construction company after receiving workers compensation benefits. To avoid the construction companies workers compensation law immunity, the estates of the deceased alleged that the construction company engaged in conduct which was "substantially certain to result in serious injury or death." FCCI filed a declaratory judgment action seeking a determination that its liability policy did not require it to defend or indemnify the construction company. FCCI also moved for summary judgment stating that the wrongful death complaints failed to establish a covered accident and alleged intentional conduct that is excluded from coverage. The court entered summary judgment for the defendants and FCCI appealed.

The court reaffirmed the "intentional tort" exception to workers compensation immunity and that in order to prove this exception an employee must prove: 1) the employer exhibited a deliberate intent to injure or 2) the employer engaged in conduct which is "substantially certain" to result in injury or death. *Turner v. PCR, Inc.*, 754 So.2d 683 (Fla. 2000). FCCI argued that the complaints established the incident cannot be an "accident" and would fall within the exclusion for intentional acts by the insured. However, the court reasoned that Florida law has long held that liability policies covering "accidents" apply to injury or damage caused by the insured's intentional acts so long as the insured did not intend to cause any harm. *Grissom v. Commercial Union Ins. Co.*, 610 So.2d 1299(Fla. 1st DCA 1992). Therefore, since there was no allegation intended to cause any harm to its workers, the court concluded the incident falls within the scope of "accident" under the liability policy. Furthermore, the court stated by alleging the injury was "substantially certain" to occur did not result in the in the incident falling under the policy's exclusion. The court held since there was no allegations that the construction company intended to harm its workers, the incident does not fall under the policy exclusion for bodily injury intentionally caused by the insured. See *Royal Indemnity Co. v. Sonoco/Northeastern, Inc.*, 183 F.Supp.2d 526 (Dist. Ct. Conn. 2002).

Travelers Indemnity Co. v. PCR Inc.,

(Released by Florida Supreme Court, Dec. 10, 2004)

PRINCIPLES OF CONTRACT INTERPRETATION NOT TORT LAW GOVERNS THE MEANING OF "BY ACCIDENT" IN INSURANCE POLICY WHEN INSURER IS ATTEMPTING TO DENY COVERAGE TO INSURED FOR CLAIMS BROUGHT UNDER THE OBJECTIVE-SUBSTANTIALLY CERTAIN-PRONG OF THE WORKERS COMPENSATION LAW INTENTIONAL-TORT EXCEPTION.

This matter arose from the 1991 explosion that killed a worker at a PCR chemical plant. Following an appeal, the Florida Supreme Court held that PCR was not entitled to workers compensation exclusive-remedy defense. *Turner v. PCR, Inc.*, 732 So.2d 342 (Fla. 1st DCA 1998), *quashed*, 754 So.2d 683 (Fla. 2000). The court recognized two methods for satisfying the intentional-tort exception to the exclusive remedy provision of the Workers Compensation Law. The employee must prove the employer exhibited a deliberate intent to injure or the employer engaged in conduct which is "substantially certain" to result in injury or death. *Turner*, 754 So.2d at 687. Furthermore, the court added in order to satisfy the latter method, calls for an objective inquiry: whether the employer *should have known* that its conduct was substantially certain to result in injury or death. *Id.* at 688. Insurer brought an action stating that under the policy stating it was not obligated to defend or indemnify PCR, Inc. in the underlying tort suits. The United States Court of Appeals for the Eleventh Circuit certified this question to the Florida Supreme Court.

The Florida Supreme Court stated the issue was whether the liability policy extend coverage under *Turner's* objectively-substantially-certain standard, where an the injured employee does not allege that the employer intended to cause injury. Travelers argued that the reasoning under *Turner* and the definition of "accident" in that case should be imported to the present action. The court rejected this argument stating that in *Turner* the court employed principles of tort law to interpret Workers' Compensation Law. However, the present matter is one of contract interpretation according to the Florida Supreme Court. The court stated that principles of tort law do not control the judicial construction of insurance contracts. *Prudential Property & Casualty Ins. Co. v. Swindal*, 622 So.2d 467 (Fla. 1993). After an interpretation of the contract language regarding the coverage clause and the exclusionary clause, it was held that Travelers must provide defense to the underlying tort actions. Furthermore, the court held that public policy does not prohibit an employer from insuring the risk of liability arising under *Turners'* objectively-substantially certain standard.

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