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Virginia Federal Court Rules that Insurer Has No Duty to Defend Lawsuits Against Insureds' Alleged Participation in the Abu Ghraib Prison Abuses

In *CACI International Inc. et al v. St. Paul Fire and Marine Insurance Company*, 1:08-cv-249, the United States District Court for the Eastern District of Virginia ruled that the insurer did not owe defense or indemnity obligations under general liability insurance contracts for the insureds' alleged liabilities arising from their interrogation of detainees at the Abu Ghraib prison in Iraq. The court ruled that the allegations of the underlying lawsuits failed to satisfy the coverage territory requirements under the domestic general liability insurance contracts.

Background Facts

The insurer issued on an annual basis both domestic general liability insurance contracts and international or global general liability insurance contracts intended to cover the insureds' domestic and international businesses, respectively. However, under the international or global insurance contracts, Iraq was not a covered territory.

Under contracts with the United States government, the insureds agreed to provide interrogators and screeners to assist with military intelligence operations in Iraq. Under these contracts, the insureds' employees were deployed to various locations in Iraq, including the Abu Ghraib prison, for 12-month assignments.

On June 9, 2004, a group of former detainees alleging torture and abuse by the insureds' employees at the Abu Ghraib prison and the Buka prison filed a class-

action suit against various defendants, including the insureds. Later, on July 27, 2004, another group of detainees, or their representatives, filed a separate lawsuit alleging that they were also tortured and abused by the insureds' employees. The insureds tendered the lawsuits to their insurer for coverage.

The insureds argued that they were owed a defense under the "eight corners rule" followed by Virginia courts. The "eight corners rule" means that the court must examine the four corners of the underlying complaint and determine if any of the complaint allegations may be potentially covered by the policy. Under the "eight corners rule," the insureds argued, even though the majority of the allegations in each of the underlying detainee suits constituted intentional and uncovered conduct, there were a few allegations that would permit proof of negligent conduct, and for that reason the insurer owed them a defense. The insurer countered that, among other things, all the allegations of "bodily injury" were the result of knowing and intentional conduct — alleged abuse and torture — that failed to meet the "accident" requirement under the general liability insurance contracts, or that such allegations were otherwise precluded from coverage under the "expected or intended" exclusion.

The insurer further contended that all the alleged conduct and injury happened or occurred in Iraq, which was outside the

coverage territory requirements of the domestic general liability insurance contracts. Under the domestic contracts, coverage was limited to the “United States ... Puerto Rico and Canada” and “international waters and airspace only during travel or transportation between any of [these listed countries or territories].” The insureds countered that the allegations of negligent hiring and retention of the defendant employees by the insureds satisfied the coverage territory requirement because those acts had to have been committed in the United States, because that is where they hired the employees that allegedly abused and tortured Iraqi detainees. The insureds also contended that a limited exception to the coverage territory requirement — where “the events or offenses result from the activities of a person whose home is in the coverage territory, but is away from there for a short time on the [insured’s] business ...” — was satisfied because under the duty to defend analysis, the court had to look to the complaint allegations and there were no allegations in the underlying complaints that the insureds’ employees were not outside the domestic policies’ coverage territory for a “short time.”

The Decision

The court ruled that it need not resolve the issue of intentional conduct because the allegations in the complaint failed to satisfy the domestic policies’ coverage territory requirement, and that issue was dispositive. The court reasoned that it first had to determine the scope of the coverage territory provision under the domestic insurance contracts. The court further reasoned that unambiguous insurance contract provisions are to be given their plain and ordinary meaning, and that under the terms of the domestic insurance contracts at issue, the insurer agreed to make payments “only for covered injury or damage that’s caused by events that happen, or offenses that

are committed in the coverage territory.” The court also noted that under the limited exception to the coverage territory provision under the domestic insurance contracts, the insurer also agreed to “apply, and make payments under, this agreement for covered injury or damage that’s caused by events which happen, or offenses which are committed, in the rest of the world if ... the events or offenses result from the activities of a person whose home is in the coverage territory, but is away from there for a short time on [the insured’s] business” The court determined that giving this provision its plain and ordinary meaning meant that “coverage for injuries caused by events that happen or offenses committed outside of the coverage territory is excluded *unless* three conditions are satisfied: (1) the employee resides in the coverage territory; (2) his absence from the coverage territory is for a “short time”; and (3) he is acting within the scope of his employment or agency with the insured during the absence.” It further found that, “[a]lthough the phrase ‘short time’ does not fix a precise upper boundary for the length of time that an employee may be away from the coverage territory, the ordinary meaning of the adjective ‘short’ is well established; it means ‘lasting a brief time’ and that the phrase ‘short time’ must be read in the context of the entire policy.” In light of those findings, the court held that “given the twelve-month duration of the policy, characterizing a multi-month overseas deployment as a ‘short time’ away from the coverage territory would strain the meaning of ‘a short time’ [since] it is clear that this provision extends coverage only to a brief business trip where the employee’s permanent work site or duty station remains inside the coverage territory.” In so holding, the court also found it significant that the insured did in fact have international or global insurance contracts to cover injuries or damages caused by its activities outside the domestic contracts’ coverage territory.

Having clarified the scope of the coverage territory provision under the domestic contracts, the court next examined whether the underlying detainee lawsuits’ allegations potentially fell within the coverage territory provision. The court rejected the insureds’ contention that the underlying complaints were silent as to the length of time that the insureds’ employees were in Iraq. The court found that the allegations in the complaint established that the insureds dispatched their employees to Iraq to perform interrogations and maintain interrogation facilities for the United States military. The court, careful to draw a distinction between impermissible “extrinsic” evidence — which may not be relied upon to answer the question of the insurer’s duty to defend — reasoned that, “if a document or exhibit could be considered in evaluating a motion to dismiss or demurrer [because it is part of the complaint], it can also be considered under the Eight Corners Rule” as that information is “intrinsic” to the complaint. The court then ruled that when a court is deciding whether an insurer has a duty to defend its insured, the court may look to following “intrinsic” information: “(1) the allegations of the underlying complaint; (2) any document attached to the complaint; and (3) any document or exhibit explicitly relied on in the complaint if its authenticity is not challenged.”

Using those principles, the court found that the exhibits attached to the underlying complaints, which included job postings that established a duration of deployment to Iraq and military reports documenting abuses at Abu Ghraib, were “intrinsic” to the complaint allegations and could be considered. The court also found that the insureds’ contracts with the United States government, which established that the insureds were to provide interrogators in Iraq for daily operations and for at least a 12-month period, could also be considered because the contracts were expressly

incorporated into the underlying complaints, and because the insureds could not credibly challenge the authenticity of the government contracts. In view of that “intrinsic” information to the underlying complaints, the court ruled the insureds’ employees were not deployed to Iraq for a “short time” as required under the limited exception to the coverage territory provision of the domestic insurance contracts.

Lastly, the court rejected the insureds’ contention that the allegations of negligent hiring and supervision satisfied the coverage territory requirements because those alleged events occurred in the United States, which was inside the coverage territory of the domestic insurance contracts. The court reasoned that because the factual predicate for such claims arises from the underlying tortious conduct of the insureds’ employees,

and all the alleged abuse, torture, and other offenses committed against the detainees occurred in Iraq and outside the coverage territory, there was no coverage for these claims either.

Implications

In view of the *St. Paul* decision, in jurisdictions that employ the “eight corners rule” to determine the duty to defend, an insurer may rely on material that is “intrinsic” to the underlying complaint to defeat the duty to defend. Intrinsic material includes: (1) the allegations of the underlying complaint; (2) any document attached to the complaint as an exhibit; and (3) any document or exhibit explicitly relied on in the complaint if its authenticity is not challenged by the insured. In addition, when examining the coverage territory requirements under a general liability insurance contract, this

decision makes two important points. First, the phrase “short time” is clear and unambiguous, and that phrase shall be construed to mean “a brief business trip or temporary job assignment where the employee’s permanent work site or duty station remains inside the coverage territory.” Second, where the factual predicate for a *respondeat superior*, or negligent hiring or supervision type claim, is based on an employee’s conduct that occurs outside the coverage territory provision under the insurance contract, then the requirements of the coverage territory provision are not satisfied and there can be no coverage for such claims.

If you have any questions about this Alert or insurance coverage matters in general, please contact one of the attorneys listed in this Alert.

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