

Travelers Still On Hook For Defense Costs In Asbestos Suits

By **Linda Chiem**

Law360, New York (November 13, 2012, 4:30 PM ET) -- A New York appeals court on Tuesday partly affirmed a lower court ruling that Travelers Casualty and Surety Co. has a duty to defend Swedish engineering equipment manufacturer Alfa Laval Inc. against asbestos claims, but said OneBeacon America Insurance Co. is partially off the hook.

A five-judge panel said the lower court did not err when it declined to force the insurers to share the defense costs pro rata. The lower court ruled in November 2011 that Alfa Laval's primary insurer Travelers, as well as OneBeacon, had to put up complete defense costs for Alfa Laval after it got hit with approximately 650 asbestos suits and prompted it to seek coverage from several of its insurers.

"Although the pro rata sharing of defense costs may be ordered when more than one policy is triggered by a claim, the court, in the interest of judicial economy, did not err in declining to order such sharing at this time, with the understanding that Travelers, Alfa Laval's longest standing insurer, may later obtain contribution from other insurers on applicable policies," the panel said.

However, the panel said OneBeacon was correct in arguing on appeal that the lower court's ruling was inconsistent to the extent that both Travelers and OneBeacon could not viably provide Alfa Laval's complete defense if both their policies were implicated by the same underlying action, according to the order.

"In that case, Travelers, as the long standing insurer, should provide a complete defense, and OneBeacon may eventually be required to contribute to both defense costs and indemnification on a pro rata basis," the panel said.

Alfa Laval sought insurance coverage under policies issued by several companies, including Travelers, for underlying asbestos bodily injury claims brought against Alfa Laval and its predecessor in name, DeLaval Inc., as well as competitor company Sharples Inc. whose assets Alfa Laval acquired in 1988, according to the order.

Alfa Laval manufactures heat exchangers, industrial separators and liquid-regulating equipment and was a co-defendant in hundreds of asbestos-related lawsuits in which plaintiffs contended that occupational exposure to products containing asbestos led them to develop mesothelioma, a rare form of cancer linked to asbestos exposure.

Travelers brought suit in November 2009 in New York state court against Alfa and five of its insurers seeking to recoup defense costs it paid on behalf of Alfa for those asbestos-related claims. Travelers had contended that it had a duty to defend the underlying asbestos claims only on a pro rata “time on the risk” basis.

Alfa responded with its own suit three days later in Virginia federal court seeking a declaratory judgment that Travelers had a duty to defend and indemnify asbestos exposure claims and alleging that the insurer breached its contract by denying coverage in the past.

Counsel for the parties could not be immediately reached for comment Tuesday.

Judges Luis A. Gonzalez, David B. Saxe, James M. Catterson, Rolando T. Acosta and Judith J. Gische sat on the panel for the appeals court.

Travelers Casualty and Surety Co. and The Standard Fire Insurance Co. are represented by Stephen V. Gimigliano of Graham Curtin PA.

Onebeacon America Insurance Co. is represented by Stephen P. Murray of Hardin Kundla McKeon & Poletto PA.

Alfa Laval Inc. is represented by William G. Passannante and Cort T. Malone of Anderson Kill & Olick PC.

The case is Travelers Casualty and Surety Co. v. Alfa Laval Inc. et al., case number 650667/2009, in the Supreme Court of the State of New York, Appellate Division, First Department.

--Additional reporting by Carolina Bolado. Editing by Lindsay Naylor.

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