IN THE COURT OF APPEALS OF IOWA

No. 6-553 / 05-1636
Filed October 11, 2006

QUAD CITY CONSOLIDATION & DISTRIBUTION, INC.,
Plaintiff,

UNITED FIRE & CASUALTY CO.,
Plaintiff-Appellant/Cross-Appellee,

vs.

DEERE & COMPANY, INC.,
Defendant-Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Scott County, Mark D. Cleve, Judge.

An insurance company appeals a district court's ruling in a declaratory judgment action determining it had a duty to defend defendant on certain claims. Defendant cross-appeals the court's determination the insurance company was not required to defend on other claims. **AFFIRMED.**

Elliott R. McDonald III and Howard Zimmerle of McDonald, Woodward & Ivers, P.C., Davenport, for appellant.

Edward M. Kay and Paul V. Esposito of Clausen Miller, P.C., Chicago, Illinois, and Mark D. Aljects of Nymaster, Goode, West, Hansell & O'Brien, P.C., Des Moines, for appellee.

Heard by Huitink, P.J., and Mahan, J., and Hendrickson, S.J.

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2005).

HENDRICKSON, S.J.

United Fire & Casualty Company appeals from a summary judgment ruling declaring that it had a duty to defend Deere & Company, Inc. on a counterclaim filed by Petersen Properties, L.C. for alleged damage to its property as a result of a fire on February 20, 2001. Deere cross-appeals from the summary judgment ruling concluding that United Fire was not required to defend claims brought by other entities who also asserted they were damaged by the same fire. We affirm.

I. Background Facts & Proceedings

Petersen Properties, L.C., owned the River Cities Business Park in Davenport, Iowa. On October 26, 2000, Petersen entered into an agreement to lease space to Quad City Consolidation & Distribution, Inc. (QCCD). The lease provided QCCD and its primary warehousing customer would comply with recommendations of Factory Mutual Global (FM Global) risk management services. QCCD was to install a new sprinkler system. The lease also provided:

> Tenant agrees that any change in the mix or make up of the product it stores in any part of the Project from what was contemplated as of the date of this Lease and which requires some action to meet or maintain the standards and requirements of FM Global or its successor shall be the sole obligation and responsibility of Tenant.

On the same day, QCCD entered into a warehousing agreement with Deere & Company to store and manage goods for Deere. QCCD agreed to obtain a comprehensive general liability policy naming Deere as an additional insured. QCCD obtained a commercial general liability policy with United Fire & Casualty Company, including Deere as an insured. The policy provided:

> Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the schedule, but only with respect to your liability which may be imputed to that person or organization directly arising out of your ongoing operations performed for that person or organization.

On February 20, 2001, a fire occurred at the River Cities Business Park, causing extensive damage to the building and Deere's goods held in the building. Deere filed suit against Petersen, claiming its damages were caused by Petersen's negligence. Petersen counterclaimed, claiming its damages were caused by Deere's negligence in storing hazardous materials in the building. Petersen alleged:

> The Lease Agreement further provided that if any change were to occur in the mix or make up of the products QCCD and Deere contemplated storing at the time it executed the lease, it was the sole obligation and responsibility of QCCD and, *a fortiori*, Deere to take such action as is necessary to achieve compliance with FM loss prevention recommendations.

QCCD had not yet installed a new sprinkler system, and Petersen claimed Deere's manner, method, and density of packaging and storing its hazardous products created a fire fuel load which exceeded the capability of the existing sprinkler system.

ADS Logistics, L.L.C., Allianz Insurance Company, Federated Insurance Company, National Union Insurance Company, Acuity Insurance, Midway Oil, and Raven Corporation filed a suit against Deere and QCCD, alleging they or their insureds were damaged by the fire. The suit alleged Deere was negligent in failing to comply with the loss prevention recommendations of FM Global, and in failing to properly supervise its employees, and the employees of QCCD, in storing materials. The suit alleged QCCD was negligent, as follows: (1) failing to

timely inspect Deere commodities that were stored; (2) failing to timely install sprinklers; (3) failing to comply with FM Global loss prevention recommendations; (4) failing to inform FM Global of changes in storage; and (5) failing to warn co-tenants of fire hazards.

Ryerson Tull, Inc. and Employers Insurance of Wausau also filed a suit against Deere and QCCD, alleging they were damaged in the fire. The suit included the same negligence claims against Deere as the ADS Logistics suit, and added a gross negligence claim based on Deere's placing certain commodities in the warehouse knowing the new sprinkler system had not been installed. The suit made the same negligence claims against QCCD as the ADS Logistics suit.

Deere notified United Fire of the lawsuits and asked that United Fire defend it, pursuant to the terms of the insurance policy with QCCD naming it as an additional insured.[1] United Fire refused, stating the policy only applied to QCCD's negligence which may be imputed to Deere. United Fire believed the lawsuits sought to hold Deere directly responsible for its own acts, not for QCCD's negligence.

QCCD and United Fire filed a petition for declaratory judgment against Deere, asking the court to interpret the insurance policy. Both Deere and United Fire filed motions for summary judgment. The district court determined the insurance policy should be read to provide:

[1] QCCD and Deere later entered into a stipulation to dismiss certain parts of the petition relating to defense, hold harmless and/or indemnity under the warehousing agreement.

> John Deere is included as an insured but only with respect to QCCD's liability which may be imputed to Deere directly arising out of QCCD's ongoing operations performed for Deere.

The court found the endorsement was triggered if some liability was created by the warehousing, storage, and distribution of Deere products by QCCD, and this part of the endorsement had been satisfied.

The court also found "[a] reasonable person would understand this provision to restrict when Deere becomes an additional insured to those circumstances where liability stems from a QCCD action or failure to act, and such liability is ascribed or attributed to Deere." The court determined that in the Petersen petition, the use of the term "a fortiori," could be read to impute QCCD's liability to Deere, and therefore, it triggered a duty to defend Deere under the endorsement. The court found the ADS Logistics and Ryerson Tull lawsuits did not make any similar claims seeking to impute QCCD's liability to Deere.

United Fire filed a motion pursuant to Iowa Rule of Civil Procedure 1.904(2), and that was denied. United Fire appealed, based on the court's finding that it was required to defend Deere in the Petersen action. Deere cross-appealed, based on the court's denial of its request to have United Fire defend it in the ADS Logistics and Ryerson Tull suits.

II. Standard of Review

We review rulings on motions for summary judgment for the correction of errors at law. *Crippen v. City of Cedar Rapids*, 618 N.W.2d 562, 565 (Iowa 2000). Summary judgment may be granted on a showing "that there is no genuine issue of material fact and that the moving party is entitled to judgment as

a matter of law." Iowa R. Civ. P. 1.981(3). No fact questions exist if the only dispute concerns the legal consequences flowing from undisputed facts. *Essex Ins. Co. v. Fieldhouse, Inc.*, 506 N.W.2d 772, 775 (Iowa 1993). The construction and interpretation of an insurance policy are questions of law for the court. *Id.*

III. Petersen Counterclaim

United Fire contends the district court erred in interpreting the Petersen counterclaim to plead a claim based on imputed liability. An insurer's duty to defend is broader than the insurer's duty to indemnity. *Id.* We examine the factual allegations against the insured to determine whether the insurer must defend against the claim. *Continental Ins. Co. v. Bones*, 596 N.W.2d 552, 559 (Iowa 1999). Coverage is controlled by the actual claim asserted against the insured, not the label the claimant puts on the claim. *Id.* In some policies, the insurer may extend coverage only for certain torts. *Talen v. Employers Mut. Cas. Co.*, 703 N.W.2d 395, 402 (Iowa 2005).

An insurance provision, similar to the one in question here, was discussed in *Regent Insurance Co. v. Estes Co.*, 564 N.W.2d 846, 847 (Iowa 1997). A contractor, Estes Company, required that a subcontractor, Crawford Heating, include it as an additional insured on a policy, which was obtained from Regent Insurance Company. *Regent Ins.*, 564 N.W.2d at 847. The policy included an endorsement, which provided, "WHO IS AN INSURED . . . is amended to include as an insured the person or organization shown in the schedule, but only with respect to liability arising out of 'your work' for that insured . . . ." *Id.* at 848.

An employee of Crawford was injured when tresses installed by Estes fell on him, and he made claims against Estes. *Id.* at 847. Regent sought a declaratory judgment that it was not required to indemnify Estes under the terms of the policy. *Id.* The supreme court determined:

> Regent Insurance Company also urged as a basis for its motion for summary judgment that Estes was added as an additional insured "only with respect to liability arising out of [Crawford's work for Estes]." Because the word "you" is defined in the policy as referring to the named insured, we agree with Regent's argument concerning the limited scope of the endorsement adding Estes as an additional insured. Regent urges, and we agree, that under the undisputed facts of the case [the employee's] right of recovery against Estes was in no way attributable to the work performed or to be performed by Crawford under its contract with Estes.

Id. at 848. Thus, under the facts in *Regent Insurance*, there was no duty to defend.

In a different case, *Gabe's Construction Co., Inc. v. United Capitol Insurance Co.*, 539 N.W.2d 144, 145 (Iowa 1995), a contractor, Gabe's Construction Company, Inc., required a subcontractor, Sovde Brothers, Inc., to provide liability insurance, and Gabe was named as an additional insured on a policy with United Capitol Insurance Company. A motorist filed suit against Gabe and Sovde after he collided with a vehicle owned by Sovde. *Gabe's Constr.*, 539 N.W.2d at 145. The suit alleged Gabe was negligent in failing to take reasonable precautions to insure the roadway was kept in a reasonable safe condition for passing motorists, and failing to inspect and properly supervise the construction

project. *Id.* United Capitol declined to defend Gabe. *Id.*

The supreme court determined:

> United argues liability for the claims of negligence against Gabe arises out of Gabe's own work, not out of Sovde's work, and therefore the claims are beyond the coverage extended to an additional insured under the United endorsement. The endorsement listed Gabe as an insured "but only for liability which arises out of 'your work' for the insured by or for you." The parties agree that this policy language provides coverage to Gabe only for liability arising out of work performed by Sovde.
>
> We conclude that Gabe's liability arose out of Sovde's work. The accident occurred at the construction site during the course of Sovde's work. Rhodes' petition alleged Gabe "is liable for the negligence of Defendant Sovde Brothers, Inc." in various nonvehicle-related particulars. This claim is within the coverage extended by the endorsement.

Id. at 147. The court concluded United Capitol had a duty to defend Gabe. *Id.* at 148.

Like the policies considered in *Regent Insurance*, 564 N.W.2d at 848, and *Gabe's Construction*, 539 N.W.2d at 147, the policy here provided coverage to Deere only for liability arising out of work performed by QCCD. The policy provides that it will provide coverage to Deere only with respect to QCCD's liability which may be imputed to Deere directly arising out of QCCD's ongoing operations performed for Deere. We then look to the petitions to determine whether they allege Deere should be held responsible for the liability of QCCD, similar to the claims made in *Gabe's Construction*, 539 N.W.2d at 147, or whether they seek to hold Deere responsible for its own conduct, similar to those in *Regent Insurance*, 564 N.W.2d at 848.

Petersen's counterclaim against Deere included the allegations:

> The Lease Agreement further provided that if any change were to occur in the mix or make up of the products QCCD and Deere contemplated storing at the time it executed the lease, it was the sole obligation and responsibility of QCCD and, *a fortiori*, Deere to take such action as is necessary to achieve compliance with FM loss prevention recommendations.

The term "a fortiori," is defined in Black's Law Dictionary 65 (8th ed. 2004), as "By even greater force of logic; even more so." The term has also been defined as meaning "marked by a certainty inferred from and taken to be even more conclusive than another reasoned conclusion or recognized fact." Webster's Third New Int'l Dictionary 37 (2002). The petition may then be read to state that certain actions were "the sole obligation and responsibility of QCCD and, [even more so], Deere to take such action as is necessary . . . ."

Under our rules of civil procedure, no technical forms of pleadings are required. Iowa R. Civ. P. 1.402(2). Although the Petersen counterclaim does not specifically use the term "imputed," a fair reading of this provision of the counterclaim shows Petersen intended to impute QCCD's liability to Deere. We affirm the district court's conclusion that the Petersen counterclaim seeks to make Deere liable for QCCD's negligence, and therefore triggers United Fire's duty to defend Deere under the terms of the endorsement to the insurance policy. *See Gabe Constr.*, 539 N.W.2d at 147.

IV. ADS Logistics and Ryerson Tull Petitions

In the cross-appeal, Deere contends the district court erred by ruling that United did not owe a duty to defend Deere from the ADS Logistics and Ryerson Tull claims. Again, we look at the allegations in the petitions to determine if

United had a duty to defend. *See Essex Ins.*, 506 N.W.2d at 775. The ADS Logistics and Ryerson Tull petitions do not seek to make Deere liable for QCCD's negligence. The petitions seek only to make Deere liable for its own negligence, and to make QCCD liable for its own negligence. None of the claims can be read to impute QCCD's negligence to Deere. We find the claims in these two petitions are more like the claims made in *Regent Insurance*, 564 N.W.2d at 848, and conclude United Fire did not have a duty to defend Deere in these actions.

We affirm the decision of the district court on the appeal and the cross-appeal.

AFFIRMED.