

Insurer Not Bound By Consent Judgment Executed By Underlying Parties, Says West Virginia Supreme Court

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The West Virginia Supreme Court ruled that an insurer is not bound by a consent judgment executed by opposing parties in an underlying suit in conjunction with a covenant not to execute and an assignment of claims against the insurer. *Penn-America Ins. Co. v. Beecher*, 2017 WL 878716 (W. Va. Mar. 1, 2017).

After sustaining injuries in a timbering accident, Osborne sued his employer (H&H Logging) as well as the owner and lessor of the land on which the accident occurred (Heartwood and Allegheny). H&H tendered the suit to its insurer, Penn-America, which denied coverage based on a policy exclusion. Thereafter, H&H retained counsel at its own expense. Heartwood and Allegheny were defended by Liberty Mutual, Allegheny's insurer. Although Heartwood and Allegheny discovered that their timber contract with H&H required H&H to defend and indemnify them for job-related accidents, they did not forward that information to or request indemnity from Penn-America. Prior to trial, the parties reached a settlement containing three components: (1) a consent judgment in which Heartwood and Allegheny agreed to a \$1 million judgment against them; (2) a covenant not to execute the judgment; and (3) an assignment to Osborne of all claims Heartwood and Allegheny might have against Penn-America. Pursuant to the settlement, Osborne dismissed his claims against Heartwood and Allegheny and sued Penn-America. A West Virginia circuit court granted Osborne's summary judgment motion and ordered Penn-America to pay the \$1 million consent judgment (which represented its policy limits). The West Virginia Supreme Court reversed.

The West Virginia Supreme Court ruled that the consent judgment was not binding on Penn-America because it was not a party to the settlement or the lawsuit in which the consent judgment was entered. In so ruling, the court noted the lack of factual support for the \$1 million judgment as a "fair and reasonable valuation" of Osborne's injuries. The court rejected the argument that Penn-America should nonetheless be bound by that amount because it did not exceed policy limits. Additionally, the court ruled that the assignment of claims was void because it was based on false factual bases. In particular, the assignment was expressly based on the assertion that Heartwood and Allegheny were without insurance coverage and that the consent judgment was necessary to protect their assets, when, in fact, they were provided coverage and a defense by Liberty Mutual. Finally, the court noted the symptoms of fraud and collusion in this case: an unreasonable judgment amount and concealment of the settlement from Penn-America.

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