CARLTON FIELDS

Eleventh Circuit Maps a Route Around Four Corners

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Florida adheres to the "four corners rule," under which a liability insurer's duty to defend an insured is determined solely from the allegations of the underlying complaint. In *Composite Structures, Inc. v. The Continental Ins. Co.*, the plaintiff asserted that the rule requires insurers to defend, even where the underlying claim clearly falls within a policy exclusion, *if* the complaint fails to allege additional facts that might establish an exception to the exclusion. In March 2014, the Court of Appeals for the Eleventh Circuit disagreed. In *Composite*, two employees were allegedly injured by exposure to carbon monoxide on a "pleasure vessel" that Composite Structures designed, built, and sold. Composite was insured under two marine services commercial general liability policies, each of which excluded coverage for any damage caused by the "discharge" or "release" of "pollutants." The policies also provided, however, that the pollution exclusion would not apply where the insured could establish that five conditions had been met, including that the insured learned of the "occurrence" within 72 hours after it commenced, and that it was reported to the insurer within 30 days thereafter. Because the underlying complaint was filed three years after the alleged injury, and because the insured gave no notice of the claim before filing the complaint, it was undisputed that these conditions had not been satisfied. Noting that the sailors' complaint was silent about such matters as timely notice under Composite's insurance policy, Composite nevertheless argued that the four corners rule prohibited application of the pollution exclusion, because its operation could not be established solely on the basis of the allegations of the underlying complaint. The Eleventh Circuit Court of Appeals found, however, that Florida's courts recognize "some natural exceptions" to the rule, including one for cases in which the insurer refuses to defend based on "factual issues that would not normally be alleged in the complaint." The court held that "whether the insured provided sufficient notice of the claim" is one such issue. Future disputes about what would "normally be alleged" are likely to be decided on a case-by-case basis. **The insurer's position will be strongest where the extrinsic information is not required to establish the underlying plaintiff's legal claims, where it relates only to the relationship between the policyholder and the insurer, and especially where (as in *Composite*) it is uncontested as a matter of fact.** In what might be an even more significant ruling, the court also rejected the theory that an insurer is "required" to file a declaratory

judgment action before relying on extrinsic facts to deny a defense. As the New York Court of Appeals did just a month earlier, in *K2 Investment Group v. American Guarantee & Liability Ins. Co.*, the Eleventh Circuit suggested that such a suit is still "the preferable means for determining [a] duty to defend." But especially where, as in *Composite*, there is no factual dispute for the suit to resolve, or where filing a suit might harm the insured, seeking declaratory judgment might actually be ill-advised.

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