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Third Circuit Court of Appeals Addresses Reformation of Insurance Policy

In *Illinois National Ins. Co. v. Wyndham Worldwide Operations,* 2011 U.S. App. LEXIS 15894 (3d Cir. Aug. 3, 2011), the United States Court of Appeals for the Third Circuit had occasion to consider whether the doctrine of mutual mistake allows for reformation of an insurance policy against a party that was not part of the insurance procurement process.

Illinois National had issued several years of successive aircraft fleet insurance policies to Jet Aviation, an aircraft maintenance and charter services company. While the policies were negotiated exclusively between Illinois National and Jet Aviation, the policies extended coverage to certain qualifying Jet Aviation clients, but only when Jet Aviation managed the client's aircraft and aircraft usage. In the fifth year of the program, Jet Aviation and Illinois National negotiated a revised managed aircraft endorsement, which was the endorsement extending coverage to third parties such as Wyndham. While Jet Aviation and Illinois National intended for the endorsement to provide broader coverage for entities affiliated with Jet Aviation, the actual wording of the endorsement also had the unintended effect of providing broad coverage to clients of Jet Aviation, such as Wyndham, even when using aircraft without Jet Aviation's management. Wyndham was not aware of the change to the endorsement when issued.

During the period of the policy with the revised endorsement, a Wyndham employee rented a Cessna aircraft from a company other than Jet Aviation. The aircraft subsequently crashed, resulting in the death of five people on the ground. While Jet Aviation had no involvement with the involved plane, the wording of the revised management aircraft endorsement nevertheless would have provided liability coverage to Wyndham for the matter. Illinois National subsequently brought a declaratory judgment action against Wyndham arguing, among other things, that the policy should be reformed to reflect the mutual intent of Illinois National and Jet Aviation. Wyndham argued, and the United States District Court for the District of New Jersey agreed, that because Wyndham was not involved "in the negotiation and drafting" of the policy, the standard for reformation would not be one of mutual mistake, but rather the more stringent standard of unilateral mistake under which a party's own negligence cannot serve as a basis for reformation.

In a majority panel decision, however, the Third Circuit concluded that notwithstanding the fact that Wyndham did not participate in the underwriting process, "[r]eformation on the basis of mutual mistake can be granted even when it is to the disadvantage of a third party." In light of the testimony from Illinois National and Jet Aviation that their mutual intent was to limit coverage for non-owned aircraft to aircraft used by or at the direction of Jet Aviation, the Third Circuit held that the lower court erred by analyzing Illinois National's claim under the unilateral mistake standard rather than the less severe standard of mutual mistake. Accordingly, the Third Circuit remanded the matter for further evaluation of Illinois National's and Jet Aviation's intent, as well as Wyndham's argument that reformation, even in light of a mutual mistake, would be inequitable under the circumstances.

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