



Portfolio Media, Inc. | 860 Broadway, 6th Floor | New York, NY 10003 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Insurer Must Pay Bankrupt Manufacturer's Asbestos Claims

By **Liz Hoffman**

Law360, New York (October 06, 2011, 4:14 PM ET) -- An Ohio-based insurance company is on the hook for millions of dollars in asbestos-related health claims after an Illinois federal judge ruled last week that it cannot skirt a provision in its policy held by a bankrupt materials manufacturer.

U.S. District Judge Sharon Johnson Coleman partially granted Artra 524(g) Asbestos Trust's request for summary judgment, ruling that Transport Insurance Corp. must pay the full amount of any health claims, rather than simply covering the pennies on the dollar the trust can afford to pay claimants.

Similar insurance contracts "have been definitively interpreted to require insurers to indemnify policyholders for the full amount of approved claims rather than the discounted amount paid as a result of bankruptcy," said U.S. District Judge Sharon Johnson Coleman.

Judge Coleman relied on a nearly identical Seventh Circuit case, *UNR Industries Inc. v. Continental Casualty Co.*, in which the appeals court ruled that the bankruptcy of the policyholder does let insurers off the hook. The ruling is the first in any court to extend the UNR rights to a trust created in bankruptcy to pay out asbestos claims, said the Gilbert LLP attorneys representing Artra.

"This decision reaffirms that insurers can't take advantage of a policyholder's bankruptcy to pay less than what they owe," said partner Mark Packman, co-lead counsel for the trust. "An insurance policy is worth what it's worth, and insurers can't benefit just because a company went bankrupt."

The trust was created during the 2007 bankruptcy of Artra Group Inc. to handle future health claims stemming from paints, spackles and other asbestos-containing products manufactured in the 1950s and '60s by a company Artra later acquired. The bankrupt company transferred all its asbestos liabilities to the trust, along with assets and insurance policies to cover those payouts.

Since 2007, the trust has approved about 11,000 asbestos-related health claims worth more than \$880 million, but has been able to pay only 7.5 cents on the dollar from dwindling assets. At issue in this case was whether Transport was required to cover the discounted amount actually paid out or the full value of the claims, which would more than exhaust the \$5 million policy.

"Where, as here, a policyholder becomes bankrupt, an insurer's liability is determined by the full value of allowed claims, rather than the discounted amounts the policyholder (or its successor) can actually afford to pay," the trust said in its motion for summary judgment,

filed in May 2010.

The trust also said the same rule applied to determining whether underlying insurance had already been exhausted, as Artra's policy with Transport was excess insurance.

Transport had argued that the trust had bargained away its rights to recover under UNR during the reorganization plan.

"For this court to now permit the trust to maintain positions contrary to what the trust previously agreed would permit the trust to perpetrate a fraud on this court, the Artra bankruptcy court and Transport," the company said.

Representatives for Transport did not immediately return requests for comment Thursday.

The trust is represented by Mark Packman and Gabriel Le Chevallier of Gilbert LLP.

Transport Insurance is represented by Daniel Litchfield, Joseph Royster and Kevin Titus of Litchfield Cavo LLP.

The case is Artra 524(g) Asbestos Trust v. Fairmont Premier Insurance Co. et al, case number 1:09-cv-00458 in U.S. District Court for the Northern District of Illinois.

--Editing by Lindsay Naylor.

All Content © 2003-2010, Portfolio Media, Inc.