

Insurer Must Face \$2.75 Million Claim Over Wrongful Death Deal

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A New Jersey federal court ruled that Dana Pancoast, the widow of trash-hauling company employee who was killed in a workplace accident, can seek \$2.75 million of an underlying wrongful death settlement from the company's excess insurer.

Excess insurer Gemini Insurance Co. claimed that it had no duty to cover policyholder FCI Transport Inc.'s defense and settlement, arguing that Pancoast's suit was rooted in the fatal injuries to her late husband, who was an excluded employee.

FCI agreed to settle the suit for \$3.75 million in exchange for a guarantee that Pancoast would only seek to recover that sum from either its primary and excess insurers or two insurance brokers that were involved in procuring FCI's policies. The primary carrier agreed to provide its \$1 million policy limit toward the settlement, but Gemini declined to provide the remaining \$2.75 million, filing an instant suit against FCI and Pancoast to back its coverage denial.

FCI and Pancoast then filed a third-party complaint against FCI's insurance broker, Willis of New Jersey Inc., alleging that it is responsible for Gemini's coverage denial. Willis then lodged a complaint stating that the responsibility lies with wholesale insurance broker CRC Insurance Services Inc., which dealt directly with Gemini to obtain the policy.

US District Judge Brian R. Martinotti wrote in Tuesday's decision that the exclusionary language does not apply to claims asserted by family members of injured or deceased employees of insureds on the policy. Judge Martinotti also dismissed the negligence complaints against Willis and CRC because of the favorable outcome for FCI regarding the insured-versus-insured exclusion.

Willis is represented by Robert A. Mintz, Steven H. Weisman, and Jason Moreira of McCarter & English LLP; Gemini is represented by Nicholas L. Paone of Fleischer Potash LLP; FCI is represented by solo practitioner Michael John Gorny; and CRC is represented by Douglas Christian and Brittany Marie Wilson of Ballard Spahr LLP.