

Third Circuit Finds Reformation Based on Mutual Mistake Can Be Obtained Against Party That Did Not Participate in Contract Negotiations

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U.S. Court of Appeals, Third Circuit

In *Illinois National Insurance Company v. Wyndham Worldwide Operations, Inc.*, 653 F.3d 225 (3rd Cir. Aug. 3, 2011), the U.S. Court of Appeals for the Third Circuit, in a precedential decision, held that New Jersey law allows reformation on the basis of mutual mistake against a party that did not participate in the negotiation of a contract.

Illinois National commenced an action in the U.S. District Court for the District of New Jersey seeking a determination that Wyndham is not covered under an aircraft fleet insurance policy issued to Jet Aviation. Various claimants had sued Wyndham after two Wyndham employees rented an aircraft that later crashed, resulting in multiple fatalities. Jet Aviation, which managed Wyndham's own aircraft, had no involvement with the rented aircraft. Nevertheless, Wyndham claimed that, pursuant to a change in the policy's managed aircraft endorsement made in 2008, it was entitled to coverage under Jet Aviation's policy regardless whether the accident involved an aircraft arranged by Jet Aviation. The change had been proposed by Jet Aviation's broker and agreed to by Illinois National, without any involvement of Wyndham. Illinois National sought a declaration that Wyndham is not entitled to coverage under the policy because it excludes coverage for "non-owned" aircraft, unless operated by or used at the direction of Jet Aviation or, alternatively, reformation of the policy to conform to the parties' undisputed intent that coverage was so limited.

The provision of the Managed Aircraft Endorsement at issue – excluding non-owned aircraft coverage unless such aircraft is "operated by or used at the direction of Jet Aviation Business Jets, Inc." – remained unchanged throughout 2004, 2005, 2006 and 2007. In 2008, however, the term

"Named Insured" was substituted for "Jet Aviation Business Jets, Inc." Jet Aviation's broker proposed this change to encompass all Jet Aviation entities that might be involved in arranging non-owned aircraft for insured owners. Wyndham did not dispute that neither Jet Aviation, Marsh nor Illinois National intended the change to give any of Jet Aviation's clients such as Wyndham, referred to in the endorsement as "Insured Owners," coverage for non-owned aircraft with which Jet Aviation had no involvement. Indeed, Wyndham procured its own coverage for non-owned aircraft liability under policies from StarNet Insurance Company, outside of Jet Aviation's policy. Nevertheless, the District Court found that mutual mistake was impossible since Wyndham was not directly involved in negotiating and drafting the policy with Illinois National.

The District Court granted summary judgment to Wyndham, dismissing Illinois National's action. The court ruled that the policy provided coverage to Wyndham and reasoned – without reference to the undisputed intent of the contracting parties, Jet Aviation and Illinois National – that reformation based on mutual mistake could not be obtained against Wyndham because Wyndham was not involved in negotiating and drafting the policy. The district court also dismissed Illinois National's complaint on the ground that the reformation claim had not been adequately pled in accordance with the requirements of Federal Rule of Civil Procedure Rule 9(b). Illinois National appealed the decision.

The central issue of the appeal was whether the district court erred by disregarding the undisputed intentions of the contracting parties to the policy. Ruling that reformation based upon mutual mistake is not available as to a party not directly involved in negotiating and drafting the policy, the District Court apparently decided that any evidence of the parties' intent was irrelevant. Illinois National argued that in so doing, the District Court disregarded the fundamentals of reformation.

The Third Circuit agreed with Illinois National that the District Court erroneously interpreted New Jersey law in concluding that mutual mistake can only serve as a basis for reformation against a bargaining party. Reformation based on mutual mistake can be obtained against third parties, but is based upon the intent of the *contracting* parties. The Third Circuit found that "the understanding of persons who were not contracting parties at the time of consummation of a contract is irrelevant." Accordingly, the Third Circuit found that the District Court erred in not considering the intent of the

contracting parties. With respect to whether the claim met the requirements of Rule 9(b), the Third Circuit again disagreed with the District Court and found that Illinois National sufficiently pled mutual mistake. The fact that Wyndham had enough information with which to answer and counterclaim, engage in discovery, and move for summary judgment indicated the complaint was adequately pled.

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