

Fourth Circuit Holds That Cooperation Clause Does Not Apply to Insured's Conduct in Negotiating Bankruptcy Plan

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In *Hanson Permanente Cement, Inc. v. Kaiser Gypsum Co. (In re Kaiser Gypsum Co.)*, _____ F. 4th _____, 2023 U.S. App. LEXIS 3482 (4th Cir. Feb. 14, 2023), the Fourth Circuit ruled that an insured's obligations under a typical cooperation clause in a general liability policy only required the insured to assist and cooperate with the insurer in relation to the insurer's defense efforts in individual suits. Therefore, the insured's conduct in negotiating and proposing a bankruptcy plan could not form the basis of a claim that the insured breached its duties of cooperation, at least so long as the plan expressly preserved the insurer's coverage defenses to individual claims.

Former asbestos manufacturer Kaiser Gypsum filed for bankruptcy under Chapter 11 in 2016 seeking to resolve over 14,000 pending asbestos injury claims. Kaiser Gypsum proposed a plan that established an asbestos claim trust under Bankruptcy Code § 524(g), to be funded with various assets including an assignment of the debtor's rights under policies issued by Truck Insurance Co. ("Truck"). The plan provided that holders of uninsured asbestos claims were required to provide the trust with certain disclosures and authorizations that would help ensure that the trust paid only valid, non-duplicative claims, including specific information regarding all other claims that relate in any way to the alleged asbestos injury, and an authorization for the trust to obtain the claimant's submissions to other asbestos trusts. However, holders of claims that triggered Truck's coverage were not mandated to make similar disclosures to Truck. Their claims were to be litigated in the tort system with recovery limited to available insurance.

Truck objected to the plan, arguing that the debtor breached its duties under the cooperation clauses in the Truck policies and did not act in good faith when it failed to negotiate the same anti-fraud disclosure requirements for claims implicating the Truck policies. The district court overruled Truck's objections, and the Fourth Circuit affirmed. Applying California law to the policies, the court held that the context and language of the cooperation clause indicated that it was meant to require cooperation in the defense of individual claims, and it did not encompass an insured's conduct in proposing a reorganization plan in a bankruptcy proceeding. Further, because the plan preserved all of Truck's coverage defenses as to the claims, the court held that the plan was "insurance neutral" and therefore Truck lacked standing to object to confirmation of the plan.

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