

Oregon Appellate Court Rules That Contribution Claims Are Barred By State Statute

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The Court of Appeals of Oregon ruled that state statutory law precludes contribution claims between insurers for payments made in connection with underlying environmental claims. *Certain Underwriters at Lloyd's London v. Mass. Bonding & Ins. Co.*, 287 Or. App. 279 (Or. App. Aug. 16, 2017).

Under 2013 amendments to the Oregon Environmental Cleanup Assistance Act, a contribution action is precluded unless the underlying environmental claims for which the insurer seeks contribution had become subject to “final judgment, after exhaustion of all appeals,” prior to the effective date of the amendments. Or. Laws 2013, ch. 350 § 8(1)-(2). In the present case, the central issue in dispute was whether the underlying claims for which Lloyds sought contribution had become subject to final judgment prior to the effective date. An Oregon trial court ruled that final judgment had not been entered before the effective date and thus that Lloyd’s contribution rights were extinguished. The appellate court affirmed.

Lloyds argued that the underlying action was not a single environmental claim, but rather two separate claims: one for defense and one for indemnity. Lloyds reasoned that because it did not appeal the underlying defense cost ruling (and only appealed the indemnity findings), there was a “final judgment” on the defense cost issue prior to the 2013 amendments. The court rejected this contention, explaining that:

in determining whether there has been a final judgment after exhaustion of all appeals, it is not appropriate to examine the arguments raised on appeal to determine whether particular issues or claims were raised before the appellate court . . . ‘as long as an appeal is pending, finality does not attach piecemeal to the parts of a judgment or order that are not placed in direct controversy by the parties’ assignments or arguments in the appeal; it attaches to the case as a whole after the appellate process is complete.’

Because an appeal from the environmental action judgment was pending when the 2013 amendments became effective, the court concluded that there was no final judgment and Lloyd’s contribution claim is precluded.

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