

Where Insurer Is “Real Party-In-Interest,” Pro Rata Allocation Of Asbestos Settlements Is Not Warranted, Says New York Court

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A New York trial court declined to allocate underlying asbestos settlements on a pro rata basis, finding that the insurer, as the “real party-in-interest” after the insured company dissolved, was responsible for indemnification of all settlements. *Liberty Mutual Ins. Co. v. Jenkins Bros.*, No. 651980/2018 (N.Y. Sup. Ct. New York Cnty. June 16, 2021).

Jenkins Bros., a company that manufactured asbestos-containing products, filed for bankruptcy in 1989 and was dissolved in 2004. Thereafter, when underlying claimants brought suit against Jenkins Bros., Liberty Mutual was ordered to accept service on the company’s behalf and was declared the “real party-in-interest.” Liberty initially funded 100% of the settlements it negotiated on behalf of Jenkins Bros. However, in 2014, Liberty took the position that it was not responsible for indemnifying payments allocated to “orphan share” periods—periods in which Liberty’s policies did not cover the underlying claims.

The court ruled that under the “unique facts and circumstances of this case,” Liberty, as the real party-in-interest, was obligated to fund all settlements, including those allocated to orphan share periods. The court rejected Liberty’s assertion that it was the real party-in-interest solely for the purpose of service of process, emphasizing that Liberty’s prior conduct in negotiating all settlements evidenced its understanding that it “stood in the shoes of . . . Jenkins Bros., in all relevant and meaningful ways.” The court also observed that “pro rata allocation is not appropriate where, as is the case here, the allocation . . . is between the insurer and the tort victims,” rather than the insurer and policyholder.

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