The Effect of Asbestosis Exclusions

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Does this exclusion bar all bodily injury claims resulting from exposure to asbestos?

• “In consideration of the premium charged it is agreed that coverage under this policy shall not apply in the case of any claim arising out of ASBESTOSIS.”
Asbestosis: Assessing Insurer Liability for Indemnification and Defense Costs

9 The term “asbestosis” will be used throughout this paper to describe all the asbestos-related diseases including asbestosis, mesothelioma and lung cancer.
"All asbestos-related diseases in this comment will be referred to as ‘asbestosis.’" The three most common job-related diseases contracted by asbestos workers are asbestosis, mesothelioma, and lung cancer. For a comprehensive explanation of these diseases, see Selikoff, Bader, Bader, Churg & Hammond, Asbestosis and Neoplasia, 42 AM. J. MED. 487 (1967) [hereinafter cited as Selikoff]; Seiker, Churg & Hammond, The Occurrence of Asbestosis Among Insulation Workers in the United States, 132 N.Y. ACAD. SCI. ANN. 139 (1965); DREßEN ET AL, A STUDY OF ASBESTOSIS IN THE ASBESTOS TEXTILE INDUSTRY, PUBLIC HEALTH BILL NO. 241 (1938).
Plain Meaning or “Parol Evidence” Rule

• “When parties set down their agreement in a clear, complete document, their writing should as a rule be enforced according to its terms. Evidence outside the four corners of the document as to what was really intended but unstated or misstated is generally inadmissible to add to or vary the writing.”

• *WWW Assocs. v. Giancontieri*, 77 NY 2d 157, 163 (N.Y. 1990)

• The overwhelming majority of states follow the plain meaning or “parol evidence” rule.
UNR Indus., Inc. v. Cont'l Ins. Co.,
1988 WL 121574 (N.D. Ill. Nov. 9, 1988)

- Both parties disputed the meaning of an exclusion providing that “In consideration of the premium charged it is agreed that coverage under this policy shall not apply in the case of any claim arising out of ASBESTOSIS.”
- The court initially found that the “asbestosis” exclusion unambiguously excluded only claims arising from the disease asbestosis and issued a summary declaratory judgment on that basis.
- The insurers moved to amend the judgment and presented parole evidence demonstrating that there were “many instances in which medical, legal experts, and other insurance companies . . . have used the term asbestosis to mean ‘asbestos-related’ even though it can be shown to be incorrect from a technical point of view.” The court granted the insurers’ motion and vacated the declaratory judgment, concluding that an issue of fact existed as to the meaning of the term asbestosis.
Plaintiff-insurers brought a declaratory judgment action against the defendants seeking to exclude all coverage for asbestos-related diseases.

At issue in this case were four exclusions:

1. “claims made against the insured arising out of Asbestosis or any similar condition caused by Asbestos”;
2. “bodily injury or property damage claim or claims arising out of all asbestosis operations is excluded from the policy”;
3. “liability imposed upon the insured arising out of ASBESTOSIS”; and
4. “liability for bodily injury, personal injury or property damage caused by or arising out of asbestosis....”

The court found all of the exclusions were ambiguous and that extrinsic evidence as to the subjective intent of the plaintiff would be needed. Based upon factual evidence adduced at trial, the court held that the exclusions excluded all asbestos claims, and not just those for the disease asbestosis.
The following “asbestosis” exclusions were at issue in this case:

1) “It is understood and agreed that any bodily injury or property damage claim or claims arising out of all asbestosis operations is excluded from the policy.”

2) “This policy shall not apply to any liability imposed upon the insured arising out of ASBESTOSIS.”

Relying on evidence of the parties’ subjective intent, the D.C. Circuit Court of Appeals upheld the district court’s factual finding “that all parties knew and understood that the ‘asbestosis’ exclusions [at issue] applied to all asbestos-related disease claims.”
Matter of Celotex Corp., 175 B.R. 98
(Bankr. M.D. Fla. 1994)

- Celotex Corp. and Carey Canada, Inc., both related companies, filed for bankruptcy relief under Chapter 11.
- Insurers for both companies sought deny coverage for non-asbestosis diseases based upon an exclusion for “asbestosis and related diseases arising out of asbestos products.”
- The Court found the exclusion to be unambiguous, and to only exclude the disease asbestosis.
Owens-Illinois, Inc. v. United Ins. Co.,

• There were two exclusions at issue in this case.
  – The first, which was issued in 1980, provided that “[i]n consideration of the premium charged, it is understood and agreed that this certificate does not provide coverage for any claims arising from or due to asbestosis.”
  – The second, which was issued in 1983, substituted the word “asbestos” for “asbestosis.”

• The Court found that the earlier asbestosis exclusion did not embrace other asbestos-related diseases because “[f]or decades, the courts have recognized what the medical community has long known; asbestosis is a specific disease different from other asbestos-related illnesses.”

• The Court found the insurers evidence as to the parties’ intent regarding the first exclusion was unpersuasive even though it recognized that the words “asbestosis” and “asbestos” were occasionally used interchangeably.
AstenJohnson, Inc. v. Columbia Cas. Co.,
562 F.3d 213 (3d Cir. 2009)

• The District Court ruled in favor of the insurer:
  – The District Court, based upon expert and fact witness testimony, held that in the insurance world of the 1980s, “the term ‘asbestosis’ was used to mean two different things. First, the term was used to mean the specific asbestos-related disease discussed above and found in a medical dictionary. Second, it was used as a generic term, i.e., an all encompassing term that includes all asbestos-related diseases.”
  – The District Court also found that the parties’ course of performance revealed that “Asten understood and intended the Asbestosis Exclusion to bar all claims alleging any asbestos-related disease.”

• The Court of Appeals affirmed.