

**RRR, L.L.C.  
v.  
New Hampshire  
Insurance Co.  
and the Eight  
Corners Rule:  
Coverage and  
Duty to Defend**

This recent Coverage dispute provides a comprehensive analysis of the applicable law dealing with policy coverage and an insurer's duty to defend, while illustrating the analysis that a court will use to determine the extent of each. The Court used a liberal reading of the policy and a literal examination of the allegations of the complaint to define an insurer's coverage and duty to defend.

An auto lease customer of auto dealership filed suit alleging willful violations of the Virginia Consumer Fraud Protection Act by use of deception, false pretense, and false promises. The second count alleged a breach of contract based upon the false statements and promises underlying the first count. The third count alleged fraud, again based upon the false statements and promises support-

ing the first two counts.

The relevant coverage dealt with "Product Related Damage" defined as damages "arising out of the sale, service, or repair of a vehicle." The policy specifically excluded damages "caused by willful, dishonest, fraudulent, intentional or criminal act committed by the insured." The policy did cover unintentional violations of truth in lending or consumer credit laws, and excluded any willful or knowing violations of these same provisions.

The insured argued that the allegations implicated coverage or at least defense as a sale of a vehicle, the policy coverage regarding the Truth in Lending Act, and that the willfulness did not preclude coverage of the claims. The insurer declined coverage because the suit dealt with a lease, not a sale. Coverage was also denied because there was no allegation of violation of the Consumer Leasing Act, and because all of the facts alleged were willful acts by the insured which triggered the exclusions of the policy.

In deciding this case and other coverage disputes, Virginia courts have adopted and applied the Eight Corners Rule. First the four corners of the policy are examined and construed with all ambiguities resolved in favor of the insured. Once the

terms of coverage have been defined, the complaint is examined to determine if the claims alleged within its four corners are covered by the policy. It is the allegations in the complaint and only these allegations that define the insured's duty to defend under the policy.

The Eight Corners Rule combines the Exclusive Pleading Rule which limits the duty to defend to the pled allegations and the Potentiality Rule which requires defense if any of the allegations in the complaint could trigger coverage. The Virginia Supreme Court has ruled that when "the only reasonable construction of the policy is that the insurer was under no obligation to defend the case against the insured [because] it would not be liable under the contract for any recovery" the insurer should not interfere in the defense of the case. *Accident Corp v. Washington Co.*, 148 Va. 829, 844 (1927) More simply said, the insurer is under no duty to defend when even assuming the veracity of the allegations, no coverage would be afforded.

In analyzing each of the counts and their underlying allegations the court first looked to the nature of the transaction. As it was a lease and not a sale and there was no service of the vehicle for the customer, the coverage



was not triggered. The court went further in its finding that even if coverage were triggered by construing the transaction as a sale and not a lease and finding that the replacement of cloth seats with leather ones to cover up the false statements made in the contract was “service”, the willful, fraudulent and dishonest activities of the insured would preclude coverage under the policy exclusions.

In the second count the court found that there were no allegations that dealt with the lending of money to the customer for the lease. All of the allegations dealt with other misrepresentations. The court again went on to as-

sume the coverage under this provision and found that the willful and intentional acts of fraudulent conduct would exclude coverage.

It appears that the application of the Eight Corners Rule, the interpretation of the policy and the totality of the allegations in the Complaint, each construed in the light most favoring coverage governs the analysis of coverage and defense issues in Virginia.



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