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Opinions of the United
States Court of Appeals
for the Third Circuit

9-14-2021

Allegheny Ludlum LLC v. Liberty Mutual Insurance Co

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-3073

ALLEGHENY LUDLUM, LLC,
Appellant

v.

LIBERTY MUTUAL INSURANCE COMPANY; LIBERTY MUTUAL FIRE
INSURANCE COMPANY; HARTFORD CASUALTY INSURANCE COMPANY;
HARTFORD ACCIDENT & INDEMNITY COMPANY; CONTINENTAL
CASUALTY COMPANY*; UNITED STATES FIDELITY & GUARANTY
COMPANY

*Party was dismissed per 1/6/21 Court Order

On Appeal from the United States District Court
For the Western District of Pennsylvania
(D.C. No. 2-17-cv-01243)
District Judge: Honorable William S. Stickman, IV

Argued May 20, 2021

Before: McKEE, RESTREPO and FUENTES, *Circuit Judges*

(Opinion filed: September 14, 2021)

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Counsel for Appellees United States Fidelity & Guaranty Co

OPINION*

McKEE, *Circuit Judge*

Appellant Allegheny Ludlum, LLC appeals the District Court’s grant of summary judgment to its insurers Liberty Mutual Insurance Company; Liberty Mutual Fire Insurance Company (together “Liberty”); Hartford Casualty Insurance Company; Hartford Accident & Indemnity Company (together “Hartford”); and United States Fidelity & Guaranty Company (“USF&G”).¹ The District Court rejected Allegheny Ludlum’s assertion that the four-year statute of limitations had not expired on its declaratory judgment and bad faith claims against Appellees Liberty and Hartford.² Applying the Pennsylvania Superior Court *en banc* decision in *Selective Way Insurance Co. v. Hospitality Group Services, Inc.*,³ the District Court determined Allegheny Ludlum’s cause of action accrued when the insurers denied coverage in 2010, seven years before Allegheny Ludlum filed suit. We will affirm the District Court as to the claims against those insurers substantially for the reasons set forth in the District Court’s Memorandum and Order.

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

¹ Appellee Continental Casualty Company was dismissed per the Court’s January 6, 2021 order.

² *Allegheny Ludlum, LLC, v. Liberty Mut. Ins. Co.*, 487 F. Supp. 3d 350, 355-60 (W.D. Pa 2020).

³ 119 A.3d 1035 (Pa. Super. 2015).

We will also affirm the grant of summary judgment in favor of Appellee USF&G. The District Court relied upon the absence of a covered “occurrence” under the policy.⁴ We need not determine if there was a covered occurrence because the USF&G pollution provision clearly excludes coverage of bodily injury that “would not have occurred but for exposure to pollutants.”⁵ It is clear that the plaintiffs’ claims arose from their exposure to hexavalent chromium in welding fumes, and that the District Court correctly identified those fumes as a pollutant within the scope of the pollution exclusion. Accordingly, we will also affirm the District Court’s order as to USF&G.

⁴ See *Allegheny Ludlum*, 487 F. Supp. 3d at 360 (citing *Kvaerner Metals Div. of Kvaerner U.S., Inc. v. Comm. Union Ins. Co.*, 908 A.2d 888, 897 (Pa. 2006)).

⁵ *Id.* at 363.