

Insurer Wants Out Of Asphalt Slab Injury Suit

Law360 (January 12, 2021, 8:50 PM EST) — A South Carolina-based insurance company has asked a federal judge to find that it has no duty to indemnify a contracting company in an underlying suit brought by a woman who was struck by a large slab of asphalt that shot out of a truck after it was dislodged by an employee of the contractor.

Canal Insurance Co. said in a Monday complaint that C.W. Matthews Contracting Co. Inc. does not qualify as an insured under the business auto liability policy the insurer issued to Powell's Trucking LLC, which employed the woman who filed the underlying suit in a Georgia state court.

"There exists an actual controversy between the parties that requires a declaration by this court," Canal said. "Until such time as the court enters a declaration, Canal remains in a position of uncertainty with respect to its obligations to provide Matthews a defense and indemnification in the underlying lawsuit."

Sarah Justice filed the underlying suit against Matthews, alleging that while she was standing at the rear of a tandem truck at the cleanout area of Matthews' facility in August 2017, a Matthews employee extended a long pole into the truck causing a large slab of asphalt to dislodge and shoot out of the truck. Justice said the asphalt struck her, causing serious injury, according to Canal's complaint.

Justice alleged in the underlying suit that the Matthews employee left the scene of the accident after instructing her not to tell anyone he was there. About 10 minutes later, three or four Matthews employees approached Justice, and she implored them to call an ambulance, "which they did 'after some time' and only after first calling Ms. Justice's employer for instructions," according to Canal's complaint.

Justice asserted various theories of negligence against Matthews in her July 2019 complaint, Canal said.

In August 2019, Matthews tendered its defense of the lawsuit to Powell's and requested that Powell's indemnify and hold Matthews harmless, pursuant to an indemnification provision in a 2006 independent contract hauler's agreement between them. Powell's notified Canal of Matthews' tender of defense, but in an October 2019 letter, Canal concluded that Matthews does not qualify as an insured under the policy it issued to Powell's.

The parties in the underlying suit mediated their disputes in December 2020, but when the mediation did not result in a settlement, Matthews sent a renewed demand directly to Canal, claiming for the first time that it was an additional insured under Powell's policy with Canal, the insurer said. Matthews demanded that Canal "immediately" settle the underlying suit, threatening a third-party complaint against the insurer for bad-faith denial of coverage if it did not comply with Matthews' demands.

Canal said it disputed Matthews' purported status as an additional insured under the policy "based on the absence of any such endorsement in its records," adding that the claims in the underlying lawsuit did not trigger the indemnification provisions in the contracts.

Additionally, Canal said Matthews is prohibited under Georgia law from enforcing an indemnification provision that has the effect of shielding itself from its own negligence.

Canal also said it plans to attend an upcoming mediation of the underlying suit, but added that there remains a controversy over Canal's legal obligation to contribute to the settlement — if one is reached.

"In the event the mediation does not result in a settlement, an actual controversy will remain with respect to Canal's duty to defend, indemnify, and hold Matthews harmless in the underlying lawsuit," Canal said.

Counsel for Canal did not immediately respond to a request for comment Tuesday, and a representative of C.W. Matthews declined to comment.

Canal is represented by ***Jeremy U. Littlefield of Robbins Ross Alloy Belinfante Littlefield LLC.***

Counsel information for C.W. Matthews was not immediately available Tuesday.

The case is Canal Insurance Co. v. C.W. Matthews Contracting Co. Inc., case number 1:21-cv-00165, in the U.S. District Court for the Northern District of Georgia.