



Kirkham

493 F.2d 475 (1974) | Cited 6 times | Eighth Circuit | March 5, 1974

This is an appeal from a judgment of the United States District Court for the District of South Dakota, determining that defendant insurance companies were not liable under certain insurance policies. The trial court's opinion is reported at 361 F. Supp. 189.

Plaintiff-appellant, Kirkham, Michael & Associates, Inc. (KMA), a South Dakota engineering and architectural firm, instituted this declaratory judgment action in order to determine the scope of coverage of a Travelers Indemnity Company comprehensive general liability policy issued to KMA for the year 1966. Travelers had previously denied coverage under the policy and had refused to defend KMA in a suit filed in state court by the City of Rapid City, South Dakota, alleging, inter alia, negligence on the part of KMA in the design, preparation of plans and specifications, and supervision and inspection of the materials and work in connection with the construction of the City's sewage treatment plant.

Conjoined with KMA as plaintiffs were the Continental Casualty Company, KMA's professional liability insurer, and the Maryland Casualty Company, an issuer of a comprehensive general liability policy to KMA in 1965.

Prior to trial, the district court ordered the realignment of the Maryland Casualty Company as a party defendant and the introduction of the City of Rapid City, South Dakota, as an involuntary plaintiff.

The policy issued by Travelers to KMA in 1966 agreed:

To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of injury to or destruction of property, including the loss of use thereof, caused by accident.

With respect to such insurance as is afforded by this policy, the company shall:

(a) defend any suit against the insured alleging such injury, sickness, disease or destruction and seeking damages on account thereof, even if such suit is groundless, false or fraudulent; but the company may make such investigation, negotiation and settlement of any claim or suit as it deems expedient * * *.

With respect to the period of coverage, the policy provided: "This policy applies only to accidents



Kirkham

493 F.2d 475 (1974) | Cited 6 times | Eighth Circuit | March 5, 1974

which occur during the policy period * * *." While excluding professional liability arising from defects in maps, plans, designs or specifications, the policy did not exclude professional liability arising from supervisory or inspection services.

Travelers conceded that an "accident," within the meaning of the insurance policy, had occurred. The question presented by the case was whether the accident occurred when KMA allegedly negligently supervised and inspected the construction of the plant, within the coverage period of the 1966 policy, or when the sewage treatment plant was tendered to the City, beyond the coverage period of the 1966 policy.¹

The trial judge found:

It is the damage incurred by "accident" that triggers the policies' coverage, not the preceding wrongful acts. A thorough reading of the complaint discloses that the City sustained actual damages or injury by accident when the alleged defective facility was turned over for possession and operation.

Kirkham, Michael & Associates v. Travelers Indemnity Co., 361 F. Supp. 189, 193 (D.S.D. 1973).

In his memorandum decision, the trial judge conscientiously explored the facts of the case, the contentions of the parties, and the applicable law. We find ourselves in agreement with the trial judge, and on the basis of his opinion, affirm the judgment in favor of defendants.

1. The 1967 Travelers policy in effect at the time the plant was turned over to the City contained a broader exclusion of professional liability than that contained within the 1966 policy. KMA concedes in its brief on appeal that this exclusion forecloses coverage under the 1967 policy.

