Supreme Court of New Jersey Rules That Insurers Do Not Have a Duty to Defend or Indemnify for '*Laidlow*' Claims—as Long as the Policy Includes the Correct Exclusionary Language

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New Jersey Law Journal
April 7, 2025
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In New Jersey, as in most jurisdictions, the exclusive remedy for employees who are injured in the course of their employment is to seek benefits pursuant to the Workers' Compensation Act (WCA). That said, the New Jersey statutes, in N.J.S.A. 34:15-8, recognize an exception to the exclusivity bar of the WCA for "intentional wrongs" committed by the employer. Subsequent case law, including the seminal decision of the Supreme Court of New Jersey in *Laidlow v. Hariton Machinery*, 170 N.J. 602 (2002), and its progeny, have sought to define what an "intentional wrong" is. In short, the general rule that has developed for an injured employee to proceed and prevail upon a *Laidlow* claim against their employer is that it must be shown that the employer either subjectively desired to harm its employee or knew that its acts were "substantially certain" to result in injury to or death of the employee.

Subsequent to *Laidlow*, New Jersey courts were asked to determine whether employers were entitled to defense and indemnification for those claims under their Workers Compensation and Employers' Liability policies. In *Charles Beseler v. O'Gorman & Young*, 188 N.J. 542 (2006), and *N.J. Manufacturers Insurance v. Delta Plastics*, 188 N.J. 582 (2006), the Supreme Court of New Jersey held that the insurers were indeed obligated to defend *Laidlow* claims because coverage was not unambiguously excluded under the policies' standard C5 "intentional wrong" exclusions for claims that the employers' actions were "substantially certain" to cause harm to their employees. To be clear, the form C5 exclusion in the Workers Compensation and Employers' Liability policy precludes coverage for "[b]odily injury intentionally caused or aggravated by you…"

In response to the decisions in *Beseler* and *Delta Plastics*, the Compensation Rating and

Inspection Bureau (CRIB), which is authorized by New Jersey statute (N.J.S.A. 34:15-90.2(i)) to prepare and file amendments to the policy forms set forth in the New Jersey Workers' Compensation and Employers' Liability Insurance Manual, amended the manual in 2007 to include a "New Jersey Part Two Employers Liability Endorsement." In issuing the endorsement, CRIB noted that it was doing so because it was necessary "to restore the intent of the policy exclusion for intentional injury", and that *Beseler* and *Delta Plastics* "represent[ed] a significant erosion of the exclusive remedy provision of the [WCA] and may lead to the increased costs in the price of workers compensation and employers liability insurance." The new "New Jersey Part Two Employers Liability Endorsement" reinforces form exclusion C5 by stating that:

> With respect to Exclusion C5, this insurance does not cover any and all intentional wrongs within the exception allowed by N.J.S.A. 34:15-8 including but not limited to, bodily injury caused or aggravated by an intentional wrong committed by you or your employees, or bodily injury resulting from an act or omission by you or your employees, which is substantially certain to result in injury.

The New Jersey Department of Banking and Insurance approved the endorsement in a letter dated May 23, 2007. Indeed, the "New Jersey Part Two Employers Liability Endorsement" has been in use in the almost eighteen years since.

Recently, in *Rodriguez v. Shelbourne Spring*, 259 N.J. 385 (2024), the Supreme Court of New Jersey addressed the question of whether an insurer that issues a Workers Compensation and Employers' Liability policy is obligated to defend and/or indemnify its insured where the policy includes a "New Jersey Part Two Employers Liability Endorsement." In short, the Court concluded that the exclusionary language set forth in the Endorsement is unambiguous and not contrary to public policy, such that the exclusion is enforceable to preclude coverage for *Laidlow* claims where the endorsement is included on the policy.

The factual background of *Rodriguez* is fairly typical of a matter involving a *Laidlow* claim. There, the underlying plaintiff (Dionicio Rodriguez) was an employee of SIR Electric, which was an electrical contractor. Rodriguez was injured in a workplace accident. At the time of the accident, SIR was insured under a Workers Compensation and Employers' Liability policy issued by Hartford.

Subsequent to the accident, Rodriguez filed a workers' compensation petition against SIR in the workers' compensation court. Hartford defended SIR in that action and paid the requisite benefits to Rodriguez under Part One of the workers' compensation insurance policy.

Thereafter, Rodriguez also filed a Complaint in the Superior Court's Law Division seeking damages for the injuries he suffered in the accident. Rodriguez named SIR as a defendant to that action and asserted claims for negligence, gross negligence, recklessness and under *Laidlow*.

SIR tendered the Superior Court action to Hartford and requested a defense. Hartford denied the demand, and SIR filed a Third-Party Complaint seeking a declaration of its

entitlement to defense and indemnification for the Superior Court action. After the Law Division and Appellate Division found in favor of Hartford, the matter reached the Supreme Court of New Jersey for a determination of the issue.

In examining whether Hartford owed defense and/or indemnification to SIR, the Court began with the question of whether coverage was afforded under Part One of the policy. In its review, the Court first observed that the coverage provided by Part One of the policy was intended to suffice the requirements set forth in the WCA and specifically that employees be compensated for bodily injuries suffered in the course of their employments. The Court further held that monetary damages awarded in a Superior Court action were not "benefits" under the WCA—and therefore not covered under Part One of the policy. Rather, the "benefits" that may be awarded under the WCA include the recovery of medical benefits, death benefits for dependents, and disability benefits. The Court thus concluded that Hartford owed no duty under Part One to defend SIR against Rodriguez's claims for negligence, gross negligence or recklessness. Moreover, SIR acknowledged that Rodriguez's *Laidlow* claim, for intentional wrongdoing, did not fall within Part One.

The Court thus moved its analysis to Part Two of the policy, which furnishes Employers Liability Insurance. As the opinion describes, "[e]mployers' liability insurance is intended to serve as a gap-filler providing protection to the employer in those situations where the employee ha a right to bring a tort action despite provisions of the workers' compensation statute." To be clear, "[e]mployers' liability policies must cover both claims for benefits in the Division of Workers' Compensation and claims for workplace injuries in a common law court that fall outside of the workers' compensation system."

The form Employers' Liability policy includes multiple exclusions. Among these is a provision that precludes coverage for "[a]ny obligation imposed by a workers compensation" law. With this exclusion in mind, the Court held that Hartford did not owe a duty to defend SIR against Rodriguez's negligence, gross negligence or recklessness claims, since those causes of action were covered under Part One's required workers' compensation coverage. Stated differently, because Rodriguez had no right to bring the negligence, gross negligence or recklessness claims outside of the exclusivity bar of the WCA, those claims were determined not to trigger coverage under Part Two of Hartford's policy.

The key issue before the Court, then, was whether Hartford owed a duty under Part Two of the policy to defend and indemnify SIR against the *Laidlow* claim prosecuted by Rodriguez. In this regard, the focus began with the standard C5 exclusion—which precluded coverage for "[b]odily injury intentionally caused or aggravated by" SIR, and then turned to the extended version of the exclusion set forth in the "New Jersey Part Two Employers Liability Endorsement"—which broadened the scope of the exclusion to "all intentional wrongs within the exception allowed by N.J.S.A. 34:15-8 including … bodily injury caused or aggravated by an intentional wrong … which is substantially certain to result in injury."

In light of the language of the "New Jersey Part Two Employers Liability Endorsement," the Court held that Hartford did not owe a

duty to defend or indemnify SIR under Part Two, commenting that:

> [t]he *Laidlow* claims of intentional wrongdoing in the complaint are expressly excluded under the plain language of the Part Two policy exclusions as "intentionally caused or aggravated" by SIR under the C5 exclusion and as "substantially certain to result in injury" under the EII exclusion endorsement. Because the claims are not covered by the Hartford Policy, they cannot trigger a duty to defend on the part of the insurer.

Summarizing its overall holding, the Court noted that "none of Rodriguez's claims—whether for negligent, grossly negligent, or recklessly indifferent conduct or for intentional wrongdoing—fall within the coverage established in either Part One or Part Two of the Hartford Policy." The decision in *Rodriguez* thus stands as a definitive pronouncement from the Supreme Court of New Jersey as to the impact of the "New Jersey Part Two Employers Liability Endorsement" upon an insurer's obligation to defend or indemnify its insured-employer against a *Laidlow* claim. Simply put, as long as the endorsement is included on the policy at issue, the insurer will not be obligated to provide coverage unless some other statutory exception permits the injured employee to proceed with their claim in Superior Court.

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