

**NEWS ALERT**

**INSURANCE RECOVERY GROUP**



**Ambiguous Policy Costs Insurer \$13.5 Million In Power Plant Explosion**

By Elizabeth J. Stewart and Terence J. Brunau | April 10, 2017

*What is the meaning of “wrap-up or similar rating plan?” According to Connecticut Senior District Court Judge Warren W. Eginton, that was the \$13.5 million question in Thompson, et al. v. National Union Fire Ins. Co. of Pittsburgh, Pa., 3:14-cv-00259-WWE (D. Conn. April 6, 2017). “Wrap ups” are commonly understood to include Owner Controlled Insurance Programs (OCIPs) and Contractor Controlled Insurance Programs (CCIPs), which programs typically provide general liability insurance, workers compensation and excess liability coverage for the length of a construction project for all or a majority of the parties involved. These programs allow projects to proceed without each individual participant having to procure its own insurance policy.*

The Thompson case stemmed from a 2010 natural gas explosion at the Kleen Energy Systems power plant construction project in Middletown, Connecticut. Individuals and estates harmed by the blast had obtained a \$13.5 million judgment against Bluewater Energy Systems, Inc. – National Union’s insured and a subcontractor on the power plant project. Thereafter, the plaintiffs commenced Thompson to enforce Bluewater’s coverage claim against National Union.

National Union sought to avoid liability on the basis of the following exclusion: “This insurance does not apply to . . . any liability arising out of any project insured under a ‘wrap-up’ or similar rating plan . . . .” The policy, however, did not define the individual terms of the exclusion, including “wrap-up” or “similar rating plan.” Applying Georgia law, the Court explained that National Union had a duty to explain policy terms to Bluewater so that Bluewater could understand the extent of any coverage limitations.

According to the Court, while insurance experts and attorneys may debate the meaning of the exclusion, the Court could not find that a reasonable layperson in Bluewater’s position would have understood and expected that coverage was excluded in this case. Granting summary judgment for the plaintiffs, Judge Eginton concluded that the policy exclusion was ambiguous, and, under Georgia law, the policy must be strictly construed against National Union to provide coverage for its insured.

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