

Insurance Coverage Denied for Designer of Thomas & Friends Toys

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On April 5th, the Seventh Circuit Court of Appeals issued its opinion in *ACE American Insurance Co. v. RC2 Corp.*, No. 09-3032. RC2 designs and markets the Thomas & Friends toys, which are manufactured in China.

In 2007, RC2 recalled certain of its wooden railway trains and train set components that had been manufactured in China between 2005 and 2007 because they contained lead. This recall led to numerous class action lawsuits against RC2, alleging that the recalled toys were negligently manufactured and tested.

ACE American Insurance Co. issued commercial general liability policies to RC2. The policies excluded coverage of "occurrences" that took place within the United States. ACE denied coverage for the class action lawsuits against RC2, claiming that the policies excluded the damages in question because the occurrences took place within the United States. RC2 argued that Illinois law compelled the conclusion that an "occurrence" took place in China, where at least some of the negligent acts that "caused" the harm took place.

Under the terms of the policy, the insurance applied only to "bodily injury" and "property damage" caused by an "occurrence" that took place in the "coverage territory." The term "occurrence" was defined as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions." "Coverage Territory" included anywhere in the world but excluded "the United States of America (including its territories and possessions)."

The Seventh Circuit held that ACE did not have a duty to defend RC2 for the class action lawsuits under the terms of the policies:

"In sum, under Illinois law and unless a particular policy contemplates a different definition, an accident occurs when and where all the factors come together at once to produce the force that inflicts injury and not where some antecedent negligent act takes place. Thus, under the policies in question here, the accident that constitutes the policy-triggering occurrence takes place at the location of the exposure to lead paint, not at the location where the products were manufactured and painted. Because the parties agree that all the alleged exposure to the products took place within the United States, these occurrences took place in the excluded coverage area of the ACE international policies."

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