

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-2052

WESTFIELD INSURANCE COMPANY,

Plaintiff – Appellant,

v.

SISTERSVILLE TANK WORKS, INC.; ROBERT N. EDWARDS; E. JANE PRICE, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF ROBERT G. PRICE, DECEASED; DOUGLAS L. STEELE; CAROL STEELE,

Defendants – Appellees,

and

GARY THOMAS SANDY; PEGGY P. SANDY,

Defendants,

and

REAGLE & PADDEN, INC.; DAVID C. PADDEN,

Third Party Defendants – Appellees.

Appeal from the United States District Court for the Northern District of West Virginia, at Wheeling. John Preston Bailey, District Judge. (5:18-cv-00100-JPB-JPM)

Argued: October 26, 2022

Decided: February 6, 2024

Before AGEE and WYNN, Circuit Judges, and MOTZ, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

ARGUED: Brent K. Kesner, KESNER & KESNER, PLLC, Charleston, West Virginia, for Appellant. Ryan Paul Orth, CASEY & CHAPMAN, PLLC, Wheeling, West Virginia; Zachary Benjamin Pyers, REMINGER CO., L.P.A., Columbus, Ohio; David Belknap Lunsford, HARTLEY LAW GROUP, PLLC, Wheeling, West Virginia, for Appellees. **ON BRIEF:** Ernest G. Hentschel, II, KESNER & KESNER, PLLC, Charleston, West Virginia, for Appellant. Patrick S. Casey, Sandra M. Chapman, CASEY & CHAPMAN, PLLC, Wheeling, West Virginia, for Appellee Sistersville Tank Works, Inc. Kenton H. Steele, REMINGER CO., L.P.A., Columbus, Ohio, for Appellees Reagle and Padden, Inc. and David C. Padden.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

In this diversity insurance dispute, the district court granted summary judgment to Sistersville Tank Works (“STW”) on its claims against Westfield Insurance Company. *See Westfield Ins. Co. v. Sistersville Tank Works, Inc.*, 484 F. Supp. 3d 283, 289, 298 (N.D.W. Va. 2020). Westfield appeals, principally contending that the district court applied the wrong theory to determine when insurance coverage under the policy was triggered under West Virginia law. Westfield maintains that the district court should have applied a manifestation theory. STW contends that the district court properly applied a continuous-trigger theory.

Finding no controlling West Virginia law addressing this issue, we certified the following question to the Supreme Court of Appeals of West Virginia:

At what point in time does bodily injury occur to trigger insurance coverage for claims stemming from chemical exposure or other analogous harm that contributed to development of a latent illness?

Westfield Ins. Co. v. Sistersville Tank Works, Inc., No. 20-2052, 2022 WL 16911994, at *1 (4th Cir. Nov. 14, 2022) (per curiam).

West Virginia’s highest court has responded that “[a]fter careful review of the language used in the [insurance] policy,” its “answer to the question is that a ‘continuous-trigger’ theory applies to the policy.” *Westfield Ins. Co. v. Sistersville Tank Works, Inc.*, 895 S.E.2d 142, 145 (W. Va. 2023). This resolves the central disagreement between the parties and requires affirmance of the district court’s resolution of this issue.

Westfield also raises two other issues on appeal. We see no error in the district court's conclusions as to those issues. With respect to them, we affirm on the basis of the district court's opinion.

AFFIRMED