

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

YVONDA MILLER

NO. 2017 CW 1267

VERSUS

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WAL-MART LOUISIANA, LLC, WAL-MART STORES, INC., WAL-MART STORES EAST, LP, WAL-MART STORES EAST, INC., WAL-MART ASSOCIATES, INC., AND ABC INSURANCE COMPANY

DEC 07 2017

In Re: Continental Casualty Company, applying for supervisory writs, 19th Judicial District Court, Parish of East Baton Rouge, No. 634243.

BEFORE: WHIPPLE, C.J., McDONALD AND CHUTZ, JJ.

WRIT GRANTED IN PART, DENIED IN PART. The trial court's August 23, 2017 judgment denying the motion for summary judgment filed by third party defendant, Continental Casualty Company, is reversed, in part, to the extent that it denied the motion for summary judgment on the issue of whether Continental Casualty Company owes a duty to defend Wal-Mart Louisiana, LLC. The issue of whether a liability insurer has a duty to defend a civil action against its insured is determined by application of the "eight corners rule," under which an insurer must look to the "four corners" of the plaintiff's petition and the "four corners" of its policy to determine whether it owes that duty. The insurer's duty to defend suits brought against its insured is determined by the factual allegations of the injured plaintiff's petition with the insurer being obligated to furnish a defense unless it is clear from the petition that the policy unambiguously excludes coverage. Assuming the factual allegations of the petition are true, if there could be both (1) coverage under the policy, and (2) liability to the plaintiff, the insurer must defend the insured regardless of the outcome of the suit. Additionally, the factual allegations of the petition are to be liberally interpreted in determining whether they set forth grounds which bring the claim within the scope of the insurer's duty to defend the suit brought against its insured. If a petition does not allege facts within the scope of coverage, an insurer is not legally required to defend a suit against its insured. **Maldonado v. Kiewit Louisiana Co.**, 2013-0756 (La. App. 1st Cir. 3/24/14), 146 So.3d 210, 218-19. The policy at issue herein issued by Continental Casualty Company provides coverage to the additional insured, i.e., Wal-Mart Louisiana, LLC, solely for liability due to the named insured's, i.e., Clifford Lee and Associates', negligence specifically resulting from the named insured's work for the additional insured which is the subject of the written contract, and there is no coverage for liability resulting from the sole negligence of the additional insured. Plaintiff's petition herein did not name Clifford Lee and Associates as a defendant, makes no allegation about any acts or omissions of Clifford Lee and Associates and makes no allegations as to the roof causing the

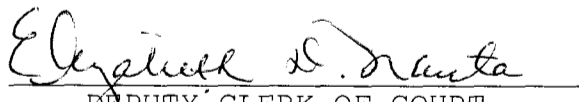
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water on the floor. Accordingly, at this time, there are no allegations in the petition setting forth grounds bringing plaintiff's claim within the scope of Continental Casualty Company's duty to defend Wal-Mart Louisiana, LLC. Accordingly, the motion for summary judgment filed by third party defendant, Continental Casualty Company, is granted, in part, without prejudice, as to the issue of the duty to defend. In all other respects, the writ application is denied.

JMM
WRC
VGW

COURT OF APPEAL, FIRST CIRCUIT



DEPUTY CLERK OF COURT
FOR THE COURT