

726 Fed.Appx. 562

This case was not selected for publication in West's Federal Reporter.

See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of App. 9th Cir. Rule 36-3.

United States Court of Appeals, Ninth Circuit.

SAN FRANCISCO BAY AREA RAPID
TRANSIT DISTRICT,
Plaintiff-counter-defendant-Appellant,
v.
GENERAL REINSURANCE
CORPORATION,
Defendant-counter-claimant-Appellee.

No. 16-15406

Argued and Submitted November 16, 2017 San
Francisco, California

Filed March 06, 2018

Synopsis

Background: San Francisco Bay Area Rapid Transit District (BART) brought breach of contract action against its excess insurer for workers' compensation liability. The United States District Court for the Northern District of California, [Jacqueline Scott Corley](#), Magistrate Judge, Presiding, entered judgment in favor of insurer. BART appealed.

Holdings: The Court of Appeals held that:

[1] breach of contract action was not barred by statute barring removal of civil actions arising under workmen's compensation laws;

[2] *Rooker-Feldman* doctrine did not apply to preclude district court's jurisdiction over breach of contract action; and

[3] insurer was not bound by the determination of date of injury of a former BART employee made during a proceeding before the California Workers' Compensation Appeals Board (WCAB).

Affirmed.

West Headnotes (3)

[1] **Removal of Cases** — Restrictions by federal or state statutes

Breach of contract action brought by San Francisco Bay Area Rapid Transit District (BART) against its excess insurer for workers' compensation liability was not barred by statute barring removal of civil actions arising under workmen's compensation laws, given that the action did not involve an adjudication of an employee's workers' compensation benefits and did not arise under state workers' compensation laws. 28 U.S.C.A. § 1445(c).

2 Cases that cite this headnote

[2] **Courts** — Particular Cases and Contexts

Rooker-Feldman doctrine did not apply to preclude district court's jurisdiction over breach of contract action brought by San Francisco Bay Area Rapid Transit District (BART) against its excess insurer for workers' compensation liability, given that the action was not a de facto appeal of the California Workers' Compensation Appeals Board (WCAB) award against BART, insurer was not a party to the WCAB proceeding, and *Rooker-Feldman* would not apply to review of state agency actions.

2 Cases that cite this headnote

[3] **Workers' Compensation** — Persons concluded

Under California law, excess insurer for workers' compensation liability for San Francisco Bay Area Rapid Transit District (BART) was not bound by the determination of

date of injury of a former BART employee made during a proceeding before the California Workers' Compensation Appeals Board (WCAB), where insurer was not notified of the underlying proceeding until one week after BART's compromise and release had been approved by the WCAB.

[2 Cases that cite this headnote](#)

Attorneys and Law Firms

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Appeal from the United States District Court for the Northern District of California, [Jacqueline Scott Corley](#), Magistrate Judge, Presiding, D.C. No. 3:14-cv-01866-JSC

Before: [RAWLINSON](#) and [BYBEE](#), Circuit Judges, and [FRIEDMAN](#),* District Judge.

MEMORANDUM**

Plaintiff-Appellant San Francisco Bay Area Rapid Transit District ("BART") appeals ***564** the district court's entry of judgment in favor of Defendant-Appellee General Reinsurance Corp. ("GRC"), BART's excess insurer for workers' compensation liability from July 1, 1985 to July 1, 1992, in this breach of contract action. The parties are familiar with the facts and proceedings, and we will not state them except as necessary to explain our decision.

The central issue in this coverage litigation is whether GRC is bound by the determination of the date of injury of a former BART employee made during a proceeding before the California Workers' Compensation Appeals Board ("WCAB"). If GRC is not bound, then BART concedes it cannot prove its breach of contract claim because the date of injury falls outside the GRC policy

period and its losses are not covered.¹ The district court held that GRC was not bound by the WCAB's findings as to the date of injury, and subsequently entered judgment for GRC. We have jurisdiction under [28 U.S.C. § 1291](#), and we affirm.

^[1] ^[2]The district court did not lack subject matter jurisdiction. This action was properly removed. This breach of contract coverage action does not involve an adjudication of an employee's workers' compensation benefits and does not "aris[e] under" California workers' compensation laws. [28 U.S.C. § 1445\(c\)](#). Accordingly, [28 U.S.C. § 1445\(c\)](#) did not bar removal. See *U.S. Fid. & Guar. Co. v. Lee Invs. LLC*, 641 F.3d 1126, 1132 (9th Cir. 2011). The *Rooker-Feldman* doctrine is also inapplicable. BART's breach of contract action against its excess insurer is not a de facto appeal of the WCAB award against BART. Moreover, GRC was not a party to the WCAB proceeding and the *Rooker-Feldman* doctrine cannot be applied to a non-party to the state court action, see *S. Cal. Edison Co. v. Lynch*, 307 F.3d 794, 805 (9th Cir. 2002), and *Rooker-Feldman* does not apply to review of state agency actions, *id.*; see also *Verizon Md. Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 644 n.3, 122 S.Ct. 1753, 152 L.Ed.2d 871 (2002).

^[3]California law does not preclude GRC from litigating the date of injury determination in this coverage action. An insurer may be precluded from relitigating a judgment against its insured in a coverage action if it was duly notified of the underlying action and had a full opportunity to protect its own interests in that action. *Exec. Risk Indem., Inc. v. Jones*, 171 Cal.App.4th 319, 89 Cal.Rptr.3d 747, 759 (2009). GRC does not challenge BART's liability to the employee or the amount of the award against BART, however. Instead, GRC seeks to litigate a factual question that goes to coverage under its policy. It is not barred from doing so by the stipulation between BART and its employee or by the WCAB's finding in approving that agreement. See *id.* at 760. Moreover, GRC was not notified of the underlying proceeding until one week after BART's compromise and release had been approved by the WCAB. It therefore was not duly notified of the underlying action against its insured and would not be bound by the judgment against its insured under *Executive Risk*. See *id.* at 759.

As BART concedes its claim is not covered under the policy, GRC is not estopped from denying coverage. GRC has not raised a late notice defense. It argues instead that the policy does not cover the claim in the first instance. Equitable estoppel is thus inapplicable. Equitable estoppel ***565** is "not available to bring within the coverage of a policy risks not covered by its terms, or risks expressly

excluded therefrom....” *Supervalu, Inc. v. Wexford Underwriting Managers, Inc.*, 175 Cal.App.4th 64, 96 Cal.Rptr.3d 316, 326 (2009), as modified (quoting *Manneck v. Lawyers Title Ins. Corp.*, 28 Cal.App.4th 1294, 33 Cal.Rptr.2d 771, 777 (1994)).

Because GRC is not bound in this coverage litigation by the date of injury determination in the WCAB proceeding, judgment was properly entered in favor of GRC. The

judgment of the district court is **AFFIRMED**.

All Citations

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Footnotes

- * The Honorable Paul L. Friedman, United States District Judge for the District of Columbia, sitting by designation.
- ** This disposition is not appropriate for publication and is not precedent except as provided by [Ninth Circuit Rule 36-3](#).
- 1 After the district court determined that GRC was not bound by the WCAB’s date of injury finding, BART stipulated to the entry of judgment in favor of GRC because both GRC and BART’s experts found that the employee’s exposures during his employment with BART were injurious after the GRC policy period ended.