

## The Third Circuit Court Of Appeals Corrects The District Of New Jersey's Mistake Regarding The Doctrine Of Mutual Mistake

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**O**n Aug. 3, 2011, the Third Circuit Court of Appeals in *Illinois National Insurance Company v. Wyndham Worldwide Operations, Inc.*, No. 10-3833, 2011 U.S. App. LEXIS 15894, reversed a decision of the United States District Court for the District of New Jersey and held, in a case of first impression, that New Jersey law allows reformation on the basis of mutual mistake even against a party that did not participate in the negotiation of the contract.

Illinois National Insurance Company ("Illinois National") issued a series of aircraft fleet insurance policies (the "policies") to Jet Aviation Business Jets, Inc. ("Jet Aviation"), and to specified clients of Jet Aviation. The policies contained endorsements that provided coverage for Jet Aviation's clients. In an attempt to clarify that entities affiliated with Jet Aviation were covered, the parties revised the endorsement language and included the new language in the 2008 policy. Although Jet Aviation and Illinois National believed that the change did not expand coverage to entities that were unaffiliated with Jet Aviation, on its face, the modification appeared to provide third parties with coverage when using non-owned aircraft without Jet Aviation's involvement. Jet Aviation managed an aircraft owned by Wyndham Worldwide Operations, Inc., and its subsidiaries ("Wyndham") and provided insurance for that aircraft pursuant to the terms of a series of service agreements. In 2008, a Wyndham employee rented an aircraft from an unaffiliated aviation company to travel to a Wyndham meeting and subsequently crashed the plane, resulting in fatalities. Although the service agreements between Jet Aviation and Wyndham provided that Jet Aviation could secure alternative aircraft for Wyndham's use, Jet Aviation had no involvement in this transaction.

Illinois National filed a declaratory judgment action against Wyndham, arguing that the District Court should exercise its equitable power of reformation because there had been mutual mistake in the drafting of the contract between Illinois National and Jet Aviation and the parties did not intend for the endorsement to provide coverage to Wyndham in this situation. In response, Wyndham argued that since it did not participate in the negotiation and drafting of the 2008 policy, there could be no mutual mistake regarding it, and therefore reformation was not appropriate.

The District Court agreed with Wyndham, but on appeal, the Third Circuit found that the District Court's opinion was inconsistent with New Jersey law principles that the "power [of a court of equity to grant reformation] is not limited to the original parties to the contract, but extends to all those standing in privity with them." The Third Circuit held that "[r]eformation on the basis of mutual mistake can be granted even when it is to the disadvantage of a third party." In reversing, Third Circuit instructed that "[o]n remand, the District Court should evaluate Illinois National's and Jet Aviation's intent as well as Wyndham's arguments that reformation may be inequitable due to negligence and because the remedy is sought after an accident."

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*Cozen O'Connor is a global leader in representing the insurance industry on coverage matters. For further analysis of *Illinois National Insurance Company v. Wyndham Worldwide Operations, Inc.*, No. 10-3833, 2011 U.S. App. LEXIS 15894, and how it may impact various coverage issues, please contact William P. Shelley at [wshelley@cozen.com](mailto:wshelley@cozen.com) or Andrea Cortland at [acortland@cozen.com](mailto:acortland@cozen.com).*