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NEWSLETTER

Coverage Barred for Claim Arising before Policy Period

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A federal district court in New York, applying New York law, has held that a claims-made policy precludes coverage for a lawsuit based on a transaction where, prior to the inception of the policy, one of the plaintiffs in the underlying litigation had sent a letter to the policyholder making the same allegations concerning a similar transaction. *Seneca Ins. Co. v. Kemper Ins. Co.*, 2004 WL 1145830 (S.D.N.Y. May 21, 2004). The court reasoned that the lawsuit and letter were claims arising from "Interrelated Wrongful Acts" and therefore constituted a single claim that arose before the inception of the policy.

The policyholder, an equestrian trade association, purchased a liability insurance policy from one insurer with a policy period of July 18, 2000 to July 18, 2001, and then purchased a second policy from a different insurer with a policy period of August 31, 2001 through August 31, 2002. The first policy precluded coverage for claims alleging antitrust violations and provided that "the Insured shall be reimbursed for all amounts which would have been collectable under this policy if such allegations are not subsequently proven." The second policy provided coverage on a claims-made basis and defined "Claim" to include "a written demand against any Insured for monetary damages or other relief." The same policy provided that "[a]ll Claims arising from the same Wrongful Act and all Interrelated Wrongful Acts shall be deemed one Claim, and such Claim shall be deemed to be first made on the earlier date that...any of the Claims were first made against an Insured under this Policy or any prior policy." The policy defined "Interrelated Wrongful Acts" as "any and all Wrongful Acts that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally or logically connected facts, circumstances, situations, events, or causes." The second policy also contained a prior notice exclusion precluding coverage for claims "based upon, arising from, or attributable to: (a) any Wrongful Act...which has been the subject of any written notice given under any other policy, providing such policy would have provided coverage but for the exhaustion or diminution of its limits of liability; or (b) any Wrongful Act whenever occurring, which, together with a Wrongful Act described in (a) above, constitute Interrelated Wrongful Acts."

On July 6, 2001, during the first policy period, the association received a letter from an attorney representing a horse show organizer, which asserted that the association's refusal to grant official recognition to a certain horse show on grounds of "mileage conflicts" constituted a restraint of competition in violation of antitrust laws. The letter, which stated that the organizer had "sustained actual direct damages," requested a meeting to seek resolution of the matter and stated that the attorney would proceed on the organizer's behalf if the

meeting did not take place. The association submitted the letter to the first insurer, which disclaimed coverage on the grounds that the policy did not cover antitrust violations but agreed to defend under a reservation of rights. In July 2002, the same attorney informed the association by letter that he intended to file a complaint alleging antitrust violations on behalf of the same horse show organizer and an additional party to whose horse shows the association purportedly had refused to grant official recognition because of mileage conflicts. The two plaintiffs filed their suit in August 2002, and the second insurer rejected the association's claim for coverage. The first insurer subsequently sued the second insurer, alleging that the latter breached its duty to defend.

The court held that the second insurer properly denied coverage because the August 2002 lawsuit and the July 2001 letter constituted a single claim made prior to the inception of the second policy since both the letter and the lawsuit arose from "Interrelated Wrongful Acts." The court first reasoned that the July 2001 letter was a "claim" under the policy and applicable case law. The court explained that although the letter did not demand a specific amount of monetary damages or other relief, it alleged damages and requested a meeting whose purpose impliedly was to seek damages or relief.

The court next determined that the lawsuit and the letter "arose from, at minimum, Interrelated Wrongful Acts" because they shared a common factual nexus, including attempts to gain official recognition for horse shows, which the association had rejected on the basis of the mileage rule. The court also noted that the attorney who wrote the July 2001 letter also drafted the July 2002 letter and the complaint in the lawsuit. The court rejected the first insurer's argument that the two claims did not arise from "Interrelated Wrongful Acts" because the suit and the letter involved separate applications to the association for separate shows, which the association had denied in separate decisions. The court reasoned that the definition of Interrelated Wrongful Acts did not impose such a requirement; rather it required only a sufficient factual nexus. Consequently, the court held that the lawsuit and July 2001 letter constituted a single claim that arose before the second insurer's policy period and granted the second insurer's motion to dismiss.

However, the court did reject the second insurer's argument that the prior notice exclusion also justified dismissal. The court reasoned that the second insurer could not carry its burden of proving that the first policy provided coverage for the August 2002 lawsuit. The court noted that the actual extent of coverage under the first policy was disputed because of the antitrust exclusion and the first insurer's decision to defend under a reservation of rights, and that the first insurer's complaint was "not deficient on this point such that it must be dismissed."

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