

Pending Litigation Exclusion Bars Coverage for Arbitration

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The U.S. District Court for the Northern District of Illinois, applying Illinois law, has held that an insurer has no duty to defend an insured claims manager in connection with an arbitration because that arbitration arose out of a lawsuit pending prior to the policy inception and the policy contained an exclusion for "any claim arising out of any litigation pending and/or prior to" the policy inception date. *American Equine Ins. Group, Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA*, 2004 WL 1700941 (N.D. Ill. July 28, 2004).

In June 1998, the claims manager and its client entered into an underwriting and claims management agreement stating that the claims manager would act as the client's claims manager for claims submitted under animal mortality policies issued by the client. In September 2000, owners of a horse insured by the client filed suit against the client for not promptly administering their claim. The case settled in 2002, and the client subsequently demanded indemnification from the claims handler pursuant to their 1998 agreement. Arbitration between the claims handler and its client commenced shortly thereafter.

The claims manager sought coverage under its agents and brokers insurance policy, which had incepted in 2001. In obtaining that insurance, the insured had disclosed the 2000 suit. Further, the policy contained an exclusion for "any claim arising out of any litigation pending and/or prior to November 1, 2001, or any fact, circumstance or situation alleged in such litigation, and furthermore, this policy does not apply to any future claim arising out of any of the foregoing."

The district court concluded that the prior litigation exclusion barred coverage for the arbitration between the claims manager and its client. The court rejected the insured's argument that the exclusion was inapplicable because the arbitration arose out of its 1998 agreement with its client rather than the lawsuit. The court held that a claim "arise[s] out of another claim or from a fact circumstance, or situation" where "the claim...originate[s] or come[s] into being from that claim, fact, circumstance, or situation." Because the claim would not have existed, but for the horse owner's lawsuit and subsequent settlement, the court concluded that the exclusion applied to bar coverage for the claim.

For more information, please contact us at 202.719.7130.