

# Claims Not Related, Pennsylvania Court Rules

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January 2001

A federal district court applying Pennsylvania law has held that separate lawsuits did not constitute related claims, and that a subsequent insurer therefore was obligated to cover the later-filed lawsuit. *Lehigh Valley Health Network v. Executive Risk Indem. Inc.*, C.A. No. 1999-cv-5916 (Jan. 5, 2001 E.D. Pa.).

Lehigh Valley Health Network ("Lehigh") was covered by claims-made D&O policies issued by American Continental Insurance Company ("ACIC") for the period from July 1, 1993 to July 1, 1995; by Travelers Casualty and Surety Company ("Travelers") for the period from July 1, 1995 to July 1, 1996; and by Executive Risk Indemnity Inc. ("Executive Risk") for the period from July 1, 1996 to July 1, 1997.

In March 1994, Dr. Jeffrey Toonder sued Lehigh to compel it to provide him a so-called "manpower slot" that would allow a new partner of Toonder to have hospital privileges. The case settled, and Toonder was allowed nine months to submit a new candidate. Toonder subsequently advanced Dr. Richard Angelico as a candidate. The hospital delayed in approving Angelico, so Toonder sued in March 1995 to enforce the settlement. In April 1996, during the Travelers coverage period, Angelico filed his own suit against Lehigh and others in federal court alleging a conspiracy to exclude him from the cardiothoracic surgical market in the area. He filed a state court suit against Lehigh in September 1997, while the Executive Risk policy was in effect.

ACIC, which covered the Toonder suit because it constituted a claim made during its policy period, argued that the later-filed Angelico litigation did not fall within its policy's "related claims" provision, which treated all claims based on, arising out of, directly or indirectly resulting from the same or related facts and circumstances to be a single claim made at the time the earliest claim was made. Travelers and Executive Risk, by contrast, asserted that the Angelico suits related back to the Toonder cases, so ACIC should cover the new litigation. They also invoked a prior and pending litigation exclusion.

The court first held that the ACIC policy did not apply to the Angelico claim because it was first made after the expiration of the ACIC coverage. Without elaboration, the court asserted that the ACIC policy's "related claims" language "cannot be used to expand the scope of one insurance company's liability to the benefit of another company." It also stressed the involvement of different plaintiffs in each case. Further, the court maintained that treating the Angelico case as a claim made in the ACIC policy period would convert it "into a contract for tail coverage." According to the decision, this approach "would defeat the cost conscious protection which a claims made policy is meant to provide."

The court found that the Angelico suit was a claim first made during the Travelers policy period and rejected the argument that the prior and pending litigation exclusion or related claims language precluded coverage. In that regard, the prior and pending litigation exclusion applied to claims arising out of any fact, circumstance, or situation underlying or alleged in litigation pending or prior to the inception of the policy period. The "related claims" language resembled the terms of the ACIC policy.

The court found both provisions ambiguous "as applied to the facts here." While there was a "modicum of overlap between the cases," the connection was "too attenuated." The decision stresses the differing plaintiffs and the fact that Angelico was not mentioned in Toonder's first lawsuit. Although the court conceded that Angelico was mentioned in the second Toonder suit, it asserted that what matters is the nature of the initial claim "and not later developments in the lawsuit."

Finally, the court emphasized that Travelers apparently did not require the insured to reveal pending claims in the policy application. It also noted that the Angelico dispute "was approaching its climax" at the inception of the Travelers policy, and the insured reasonably would expect to be covered for a claim "pregnant with the threat of litigation at the very inception of the policy."