

Nature of Claim, Not Identity of Claimant, Controls Whether Later-Filed Action Is Related to Prior Lawsuits

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A federal district court, applying Texas law, has held that an insurer can deny coverage for a lawsuit that was a "related claim" to prior lawsuits, even though some of the plaintiffs in the most recent lawsuit had not been parties to the prior litigation. *Tri Core Inc., et al., v. Northland Ins. Co., et al.*, No. 3-01-CV-1431-BD, 2002 WL 31548754 (N.D. Tex. Nov. 12, 2002).

The insureds sold employee benefits plans to small businesses, and were sued for allegedly making misleading representations about the plans. Upon being sued, the insureds sought coverage under a claims-made E&O policy. The insurer denied coverage, claiming that the lawsuit was related to two prior lawsuits filed against the insureds prior to the effective date of the policy. Under the applicable policy, no coverage existed for claims or suits for which the insured had knowledge of before the inception date of the policy nor for "[a]ny claim or suit for damages in any way related to any litigation which commenced prior to the [e]ffective [d]ate of [the] policy." Coverage litigation ensued, and the court found in favor of the insurer.

The court noted that the claims asserted in the later-filed litigation at issue arose out of "wrongful acts" committed prior to the effective date of the policy that were known to policyholders as of the inception date of the policy. The court further noted that a comparison of the pleadings in the two prior lawsuits that were filed prior to the effective date of the policy with the complaint filed in the underlying litigation led "to the inescapable conclusion that all three cases were 'related'...Not only [were] the factual allegations and legal theories in all three cases substantially the same, but the...plaintiffs [in the prior cases] were also named as plaintiffs" in the current underlying litigation at issue." In so holding, the court rejected the insureds' argument that the policy excluded coverage only for related claims asserted by the same parties, and since the current underlying litigation included additional plaintiffs who were not part of the prior lawsuits, claims made by the new plaintiffs should be covered. The court reasoned that "it is the nature of the claim, not the identity of the claimant," that controlled as to whether prior lawsuits were related to the current underlying suit. "It is immaterial whether the claim is made or the suit is filed by a prior plaintiff or new party...the policy excludes coverage for 'all claims involving the same wrongful act or wrongful acts which are logically or causally connected by reason of any common fact, circumstance, situation, transaction, event or decision."

For more information, please contact one of WRF's Professional Liability Attorneys at 202.719.7130