

Sexual Harassment Suit Interrelated With Earlier Disparate Treatment Proceeding Before Division of Civil Rights

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The United States District Court for the District of New Jersey has held that a claimant's administrative complaint to the New Jersey Division of Civil Rights, which alleged disparate treatment in pay because of gender, was interrelated with a later lawsuit making the same allegations but adding allegations of sexual harassment. *Regal-Pinnacle Integrations Industries, Inc. v. Phila. Indem. Ins. Co.*, No. 2013 WL 1737236 (D.N.J. Apr. 22, 2013). However, the court held that the carrier might have created coverage for a settlement of the later suit by orally agreeing to fund a settlement.

In 2007, the underlying claimant, a former employee of the policyholder, filed a complaint with the New Jersey Division of Civil Rights alleging that the policyholder paid her less than male counterparts and fired her for complaining about the disparate treatment. In 2009, she filed suit in state court making the same allegations but adding claims based upon alleged sexual harassment. The relevant policy contained a prior litigation exclusion barring coverage for claims pending before a date in 2008. The policy also provided that "[a]ll Loss arising out of the same Wrongful Act and all Interrelated Wrongful Acts shall be deemed one Loss on account of one claim. Such Claim shall be deemed to be first made when the earliest of such Claims was first made." The policy defined an Interrelated Wrongful Act to be "any causally connected Wrongful Act or series of the same, similar or related Wrongful Acts."

According to the policyholder's complaint against the carrier, although the carrier initially denied coverage, it later agreed to indemnify the policyholder for a settlement up to \$100,000. After the policyholder settled the suit, the carrier withdrew its offer to fund any portion of the settlement. The policyholder then filed suit seeking, among other things, a declaratory judgment as to coverage and damages for breach of contract.

The court determined that there was a substantial overlap between the administrative action and the later civil suit. The proceedings involved identical parties and made similar claims based upon state anti-discrimination law. All of the allegations in the administrative pleading were included in the later civil complaint. Although the civil complaint added sexual harassment claims, that did not change the fact that all of the assertions related to the policyholder's alleged discrimination on account of the claimant's gender. The court accordingly dismissed the policyholder's cause of action seeking a declaratory judgment.

However, the court denied the carrier's motion to dismiss the breach of contract cause of action. The court stated that, under New Jersey law, the parties' subsequent conduct during settlement negotiations, as alleged in the policyholder's complaint, could permit a conclusion that the parties modified the policy's terms by subsequent oral agreement, notwithstanding the policy's no-oral-modifications clause. Accordingly, the court found that dismissal of the breach of contract claim based solely on the pleadings would be "premature."