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NEWSLETTER

Court Finds Losses From Several Arbitrations Are Not Subject to One Per Claim Limit Under "Related Claims" Clause

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The United States District Court for the District of Nebraska, applying Nebraska law, has held that coverage for an insured's losses in two arbitrations were not subject to the same per claim limit under the related claims clause in a professional liability policy as were losses in five other arbitrations because each of the two arbitrations included multiple claims, some of which were not related to the other five arbitrations. *GWR Investments, Inc. v. Executive Risk Specialty Ins. Co*, 2005 WL 3143186 (D. Neb. Nov. 23, 2005).

The insurer issued consecutive one-year professional liability policies to an investment broker-dealer effective from February 2003 to February 2004 (the 2003 policy) and February 2004 to February 2005 (the 2004 policy). Each policy contained limits of $100,000 for a single claim and $250,000 in the aggregate. The policies defined "Claim" as a "written demand received by an Insured seeking monetary damages, including any civil legal proceeding or arbitration against an Insured." The policies also contained related claims clauses, providing that "[a]ll Related Claims will be treated as a single Claim made when the earliest of such Related Claims was first made." The term "Related Claims" was defined under the policies to include "all Claims involving Securities of any entity which has become the subject of a bankruptcy, insolvency, trusteeship, receivership, liquidation or reorganization . . . and all Claims . . . involving the same offering of any entity's Securities."

Ten arbitrations were filed with the National Association of Securities Dealers (NASD) against the insured broker. Seven were filed in 2003 and three were filed in 2004. Five of the seven arbitrations filed in 2003 exclusively involved the same offering of "IBF-7" notes by the IBF Special Purpose Corporation, which entered into bankruptcy along with its parent corporation in 2002. The insurer and insured agreed that these five arbitrations were "Related Claims" under the 2003 policy and subject to a $100,000 limit, which the insurer paid. The insurer and insured disagreed, however, over whether the sixth and seventh arbitrations filed in 2003 were also "Related Claims" subject to the same limit. While these two arbitrations included allegations of wrongdoing associated with the issuance of the IBF-7 notes, they also contained allegations relating to three unrelated retirement and estate accounts. The 2004 arbitrations exclusively involved the IBF-7 notes. While the insured admitted that these three claims were "Related Claims" with respect to each other, the parties disagreed as to whether the 2004 policy provided coverage for them. Coverage litigation followed.

The court rejected the insurer's contention that all seven arbitrations filed in 2003 were "Related Claims" subject to a $100,000 limit because each of them "in some way involved [the insured's] promotion of the IBF-7 Notes" and the bankrupt corporation. Noting that the definition of "Claim" under the policy did not provide that a legal proceeding or arbitration was necessarily "one, and only one, 'claim,'" the court instead found that the sixth and seventh arbitrations included multiple "claims"—some of which were related to the IBF-7 notes and some of which were not.

The court also found support for its conclusion in the existence of separate written demands seeking monetary damages in each of the sixth and seventh arbitrations. As a result, the court concluded that there were separate claims filed in 2003 that were not related to the IBF claims and that the insured was entitled to the $250,000 aggregate limit under the 2003 policy.

The court, however, agreed with the insurer that there was no coverage under the 2004 policy for the three arbitrations filed in 2004. According to the court, these arbitrations were related to the arbitrations filed in 2003 because they involved "'Securities of any entity which has become the subject of a bankruptcy' and involved the same offering of any entity's Securities." Therefore, the court found that there was no coverage under the 2004 policy because, under the "Related Claims" clause of the policy, these claims were deemed to have been made on the date of the first related claim in 2003—prior to the inception of the policy.

For more information, please contact us at 202.719.7130