

ALERT

Settlement With Insurer As to Claim Did Not Bar Coverage for Later-Arising Interrelated Claim

August 26, 2011

Applying Michigan law, the United States District Court for the Eastern District of Michigan has held that a release executed between an insurer and policyholder that settled the parties' coverage dispute under the applicable policy with respect to a claim did not preclude coverage for an interrelated claim made after the release. Even though the two claims were interrelated under the policy, the court held that the settlement agreement released the policyholder's claim for coverage only with respect to the claim that existed at the time of the settlement, and not for the later-arising claim. *Harvard Drug Group, LLC v. Twin City Fire Ins. Co.*, 2011 WL 3426193 (E.D. Mich. Aug. 5, 2011).

The applicable policy covered employment claims during 2008. One of the policyholder's employees filed suit alleging harassment and discrimination, and the policyholder tendered that suit for coverage. The insurer and policyholder settled the claim for coverage in 2009 by executing a mutual release. In 2010, the policyholder terminated the employee as part of a reduction in force, and the employee claimed that the termination was in retaliation for the earlier suit. The policyholder tendered that claim to the insurer for coverage. Both parties agreed that the retaliation claim was interrelated with the earlier discrimination claim, and therefore arose under the 2008 policy period. The parties disagreed, however, as to whether their 2009 release applied to the 2010 claim.

The court agreed that the two claims were interrelated under the applicable policy language, which defined interrelated wrongful acts as wrongful acts that have "as a common nexus any fact,

Practice Areas

D&O and Financial Institution Liability
E&O for Lawyers, Accountants and Other Professionals
Insurance
Professional Liability Defense

circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions or causes.” But the court focused on the language of the release.

The release applied to “any and all claims,” including “all rights and claims which the Insured has under the policy, . . . whether known or unknown, suspect or unsuspected, fixed or contingent, which the insured now has or may have, through and including the date hereof, that arise out of, are upon, or in any way involve, or relate to” the discrimination lawsuit and “the matters alleged or which could have been alleged in the lawsuit by” the claimant.

The court held that the release did not incorporate the policy’s terms, including its provisions regarding interrelated claims, and therefore the court would not read the release in conjunction with the policy. The court further reasoned that the phrase “including the date hereof” would be superfluous if the parties intended to release future-arising claims. The court also observed that the release did not contain language explicitly releasing later-arising claims, and that the recitals to the release specifically addressed only the discrimination lawsuit.

The court further read a provision of the release in which the policyholder acknowledged that it may have sustained damages “which are presently unknown or not suspected” as not encompassing “claims that have not yet arisen.” Rather, the language served to release damages arising out of the discrimination lawsuit which were unknown or had not come to fruition. The court also referred briefly to “Michigan law holding that a release is limited to a claim that could have been in existence at the time of execution.”

Because it read the release as unambiguously not barring coverage for the retaliation lawsuit, the court denied the insurer’s motion to dismiss and granted summary judgment to the policyholder.