

ALERT

Prior Settlement Agreement Does Not Provide Basis for Denial Under Prior Knowledge Exclusion Not Triggered by Prior Settlement Agreement

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Applying North Carolina law, a federal court has found that a prior settlement agreement did not provide a basis to deny coverage for a subsequent lawsuit between the same parties. *Henderson/Vance Healthcare, Inc. v. Cincinnati Insurance Co., et al.*, 2013 WL 5375612 (E.D.N.C. Sept. 25, 2013).

According to the underlying complaint, the litigation arose out of a mediated settlement agreement between the claimant and the insured based on a dispute regarding patient safety and the insured's alleged retaliatory treatment of the plaintiff, which dispute was resolved by a 2006 settlement agreement. The complaint alleged misconduct based on 1. acts related to the conduct that led up to the 2006 settlement agreement; 2. the insured's disclosure of the plaintiff's records, and 3. disparagement of the plaintiff by the insured's staff. The insured sought coverage from two insurers, each of which had a prior knowledge exclusion in its policy and both of which denied coverage based on that exclusion. The first carrier's exclusion precluded coverage for "any acts, errors, omissions or occurrences taking place prior to . . . the inception date if any insured on or before such date knew or reasonably could have foreseen that such act, error, omission or occurrence might result in a claim," while the second carrier's exclusion barred coverage for "any 'wrongful act' committed, attempted or allegedly committed or attempted prior to the 'policy period' . . . if, prior to . . . the date of inception, any of the policy insureds knew or should have reasonably foreseen that the 'wrongful act' may be the basis of a claim."

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In concluding that the prior knowledge exclusions did not apply to bar coverage for the underlying lawsuit, the court first emphasized that North Carolina law required exclusions to be interpreted narrowly. It then stated that the settlement, which purported to resolve existing claims, would not lead a reasonable person to foresee a future suit would be filed. Further, the court noted that a 2007 letter written by the plaintiff's counsel that "alluded to a . . . civil action" did not actually threaten suit and instead indicated that the plaintiff believed the insured would honor the settlement. Accordingly, the court concluded that the insured was not "on notice that it [would] be sued for conduct related to" the settlement agreement or its implementation. The court also emphasized that some of the alleged conduct was based on conduct unrelated to that at issue in the settlement, which conduct would likewise not have been "reasonably foreseeable" by the insured. As a result, the court determined that the prior knowledge exclusions did not apply.

The opinion is available [here](#).