

Third Circuit Holds That Insurer Bears Burden of Showing That Claims Are Related

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Applying Pennsylvania law, the United States Court of Appeals for the Third Circuit has held that, where an insurer seeks to deny coverage for a claim on the grounds that it is related to a claim made prior to the inception of a professional liability policy, the insurer bears the burden of showing that the claims are related. *Borough of Moosic v. Darwin Nat'l Assurance Co.*, 2014 WL 407477 (3d Cir. Feb. 4, 2014). The district court opinion was reported in the August 2012 edition of the *Executive Summary*.

In the underlying dispute, two property owners attempted to challenge a nearby tire company's plans to begin manufacturing operations, but were allegedly thwarted by their town's public officials, who allegedly refused to allow them to speak at public meetings and attempted to intimidate them by sending surveyors to their property. The property owners filed suit against the town, alleging violations of 28 U.S.C. § 1983. The town sought coverage for the property owners' suit under its public officials' professional liability policy. The insurer denied coverage on the basis that certain matters it deemed to be related to the suit, including a mandamus complaint by the property owners to compel the town to comply with its own zoning laws, predated the inception of the policy.

In the coverage litigation that followed, a federal district court granted the insurer's motion to dismiss the insured's demand for declaratory relief, finding that the mandamus complaint was related to the § 1983 suit and that, consequently, the § 1983 suit should be treated as a claim first made before the inception of the policy. The policy defined "Related Claim[s]" as: "all claims for Wrongful Acts based upon, arising out of, resulting from, or in any way involving the same or related facts, circumstances, situations, transactions or events

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or the same or related series of facts, circumstances, situations, transactions or events, whether related logically, causally or in any other way.” The policy required that “[a]ll Related Claims ... be treated as a single Claim made when the earliest of such Related Claims was first made, or when the earliest of such Related Claims is treated as having been made in accordance with CONDITION F(2), whichever is earlier.”

On appeal, the court remanded the case to the district court, finding that it incorrectly assigned to the insured the burden of proving that the mandamus complaint and § 1983 suit were not related claims. The court noted that, if the related claims provision was a condition precedent to coverage, the insured would bear the initial burden of demonstrating that the mandamus complaint and § 1983 suit were unrelated. The court noted that, if, alternatively, the related claims provision was an exclusion, the insurer would bear the burden of proving that the claimed loss fell within the scope of the related claims provision. The court defined a “condition precedent” as “either an act of a party that must be performed or certain event that must happen before a contractual right accrues or contractual duty arises” and an exclusion as a “limitation of liability or carving out of certain types of loss to which the coverage or protection of the policy does not apply.” The court found that the related claims provision did not fit within the definition of a condition precedent because there was no act the insured had to perform or event that had to occur for there to be no related claim first made before the policy’s inception. According to the court, in contrast, the related claims provision did limit coverage under the policy and was, hence, an exclusion. Finally, the court held that the related claims provision’s placement in the policy’s “Conditions” section rather than its “Exclusions” section was not determinative.