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NEWSLETTER

Written Notice of Wrongful Acts Not Required Where Insurer Was Aware of Acts; Later Suit Related Back to Prior Litigation

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A New York appellate court has held that a policyholder was not required, under a claims-made policy, to provide specific written notice of wrongful acts giving rise to a claim where the insurer already knew of the acts and had been involved in trying to settle the litigation arising out of the acts. *Greenburgh Eleven Union Free Sch. Dist. v Nat'l Union Fire Ins. Co.*, 2003 WL 1754020 (N.Y. App. Div., Apr. 3, 2003).

Two insurers issued consecutive, claims-made E&O policies to a school district. During the policy period when the first insurer was providing coverage, certain "disturbances" occurred at the school. As a result of the "disturbances," the school district took disciplinary action against some of the teachers and staff. The teachers and staff, through their union, then commenced a proceeding before the Public Employee Relations Board (PERB I), and the employees instituted a proceeding in federal court (Greenburgh I). The school district subsequently initiated proceedings against additional teachers and staff, and the union instituted a new proceeding before the PERB (PERB II). At that point, the first insurer's policy was discontinued, and the second insurer began providing coverage. Shortly thereafter, the teachers involved in PERB II filed suit in federal court (Greenburgh II). Both insurers disclaimed coverage for Greenburgh II, and coverage litigation ensued.

The first insurer denied coverage on the ground that it had not received written notice of the wrongful acts giving rise to the Greenburgh II claim. The court rejected the argument. It initially noted that notice requirements are to be liberally construed in favor of the insured. It then explained that while the insurer had not been given specific written notice of the disciplinary actions that formed the basis of the Greenburgh II claims, "the record overwhelmingly supports the conclusion that [the insurer] was intimately involved in seeking a global settlement of all disputes with the Teachers' Union through the time of PERB I, Greenburgh I and PERB II." The court further noted that the insurer's claims director had testified that he was aware of the disciplinary proceedings during the policy period.

The court agreed that the second insurer properly disclaimed coverage on the ground that the Greenburgh II action was not a claim first made during its policy period. The policy provided that a claim was first made at the time of the first claim arising out of the same wrongful act "or logically or causally connected wrongful acts." Since all of the disciplinary acts by the school district arose out of the same disturbances that gave rise

to Greenburgh I, the court concluded that they were "logically or causally connected," and therefore Greenburgh II was made outside of the second insurer's policy period.

For more information, please contact one of WRF's Professional Liability Attorneys at 202.719.7130