

## Release for Settled Securities Claim Precluded Coverage for Related ERISA Claim

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The United States Court of Appeals for the Seventh Circuit, applying Indiana law, has held that an ERISA class action was related to a settled securities class action and that a release between the insurer and insured precluded coverage for the ERISA suit. *RLI Ins. Co. v. Conseco, Inc.*, 2008 WL 4140620 (7th Cir. Sept. 9, 2008).

The insurer issued an excess directors and officers liability policy to a company that faced a class action for securities fraud. While the securities action was pending, the insurer and the company disputed coverage. The parties entered into a release agreement pursuant to which the insurer agreed to fund a settlement of the action subject to the right to seek reimbursement from the insured. After the securities action settled, the insurer gave up that right and entered into a supplemental agreement with the company pursuant to which the company released the insurer, in relevant part, from "any claim for coverage under any policy of insurance issued by [the insurer] . . . based on, arising out of, or in any way related to the [securities action]." The supplemental release also included an indemnification agreement.

After the settlement of the securities action, a putative class action lawsuit was filed against the company. This later lawsuit alleged violations of ERISA based on materially false Securities and Exchange Commission filings, the mismanagement of finances and divided loyalties. The company successfully moved to dismiss the ERISA action by arguing that "it has already been litigated" and that the securities action release covered the ERISA action because the ERISA claims were based on related underlying acts. The settlement in the securities action had released any claims a class member had "which [arose] out of the facts, transactions, events, occurrences, acts or omissions mentioned or referred to in the Complaint . . ."

The company sought coverage for the ERISA action under the insurer's policy. The insurer agreed to fund the defense under a reservation of rights. The insurer also instituted a declaratory judgment action against the company on the basis that the supplemental release barred coverage for the ERISA action as a claim "in any way related to" the securities action. The district court granted the insurer's motion for summary judgment, concluding that the supplemental release was unambiguous and precluded coverage for the ERISA action. The district court also ruled that the insurer had a right to reimbursement of the defense expenses it had advanced for the ERISA action.

On appeal, the company argued that the supplemental agreement and original agreement should be read in conjunction and that the phrase "in any way related" rendered the supplemental agreement ambiguous. The appellate court noted, however, that the supplemental agreement expressly "supplants and expands" the release in the original agreement. The court examined Indiana case law that interpreted the term "related" to "cover a very broad range of connections, both causal and logical." Applying this definition, the court concluded that the parties had negotiated a broad but unambiguous release, which covered the ERISA action as a related claim and relieved the insurer of its duty to defend. The court noted that the ERISA action and the securities action arose out of the same factual allegations of false reporting, and that the ERISA action had been dismissed because of its relatedness to the settled securities action. The court also affirmed the order granting the insurer indemnification and reimbursement under the supplemental agreement for defense costs advanced for the ERISA action.