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NEWSLETTER

Wage and Hour Claims of Similarly Situated Employees Held Related Under Claims-Made-and-Reported Policy

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Applying Florida law, the United States District Court for the Southern District of Florida has held that two wage and hour claims, one made during and one after the relevant policy period, were "related" and therefore constituted a single claim first made during the applicable policy period. The court also held that where the policy form excluded coverage for wage and hour claims, but such coverage was included by endorsement to the policy, the conflict between the two provisions should be resolved in favor of coverage. *Vozzcom, Inc. v. Beazley Ins. Co., Inc.*, 2009 WL 3486308 (S.D. Fla. Sept. 18, 2009).

The policyholder was a cable company insured under two consecutive claims-made employment practices liability policies issued by different insurers. During the first policy period, a former cable installer filed suit alleging that the insured had violated the Fair Labor Standards Act (FLSA). The first insurer agreed to provide a defense. Weeks after the expiration of the first policy, another former cable installer, who had been employed during the same time frame, filed suit against the policyholder alleging similar FLSA violations. Both insurers denied coverage for the second claim.

In holding that the first insurer was liable for coverage, the court relied on the first policy's definition of "One Insured Event," which included "one or more covered allegations . . . which are related by an unbroken chain of events." The court ruled that even though the second claim was made after the first policy period, the first insurer was liable for coverage because the "factual and temporal circumstances" of the second claim were closely "related" to those of the first claim. As such, the two claims were considered one event for coverage purposes.

The first insurer argued that the court's ruling would lead to an absurd result and that the insurer would be "on the hook forever" for wage and hour claims by former cable installers with contemporaneous employment periods. The court rejected this argument, noting that the policy required notice of a claim to be reported to the insurer no later than 60 days after the end of the policy period. Accordingly, the court held that any claim made after the 60-day window, even if "related" to the first wage and hour claim, would not be covered under the first policy.

The court further held that a Wage and Hour endorsement to the first policy expressly covered wage and hour claims, despite the fact that it conflicted with the definition of Insured Event, which specifically excluded wage and hour law violations. The court reasoned that because Florida courts resolve ambiguities in favor of the insured, and because any other conclusion would render the Wage and Hour endorsement meaningless, the policy must be read to cover claims for FLSA violations.