wiley

NEWSLETTER

The Hartford Did Not Assume Reliance Coverage Obligations

December 2009

The United States Court of Appeals for the Third Circuit has held, under New Jersey law, that a directors and officers liability policy issued by a successor insurer did not cover the entire period of the original policy issued by the original insurer. *G-I Holdings, Inc. v. Reliance Ins. Co.*, 2009 WL 3416166 (3d Cir. Oct. 26, 2009).

The insured holding company purchased a claims-made directors and officers liability policy from the insurer covering the period July 1, 1999 to July 1, 2002. The policy included an interrelated wrongful acts provision, which provided that all claims arising from the same wrongful conduct would be deemed a single claim first made when the first such suit was filed. Shortly after the policy's inception, the insurer, Reliance, encountered financial difficulties. In the summer of 2000, The Hartford acquired renewal and other rights to, and became a reinsurer and administrator of, several of Reliance's policies. To protect itself from Reliance's pending insolvency, the insured arranged for Reliance to change the termination date of the original policy to July 15, 2000 and secured a policy with identical terms from The Hartford covering the period July 15, 2000 to July 1, 2002. As part of the transaction Reliance and The Hartford agreed to split the original premium.

In 1997, facing $200 million dollars in asbestos liability and hundreds of thousands of future claims, the holding company distributed the stock of a profitable subsidiary to its CEO. Asbestos claimants subsequently filed fraudulent conveyance claims against both the holding company and the CEO on January 3, 2000, September 19, 2000 and September 17, 2001.

In October of 2001, a Pennsylvania state court ordered Reliance's liquidation. The insured and its CEO sought coverage for the three fraudulent conveyance suits from Reliance through the liquidation proceeding. The insured also sued The Hartford, alleging alternatively that The Hartford was liable under its policy for all three suits, and that The Hartford's contractual relationship with Reliance made The Hartford responsible for the insurer's coverage obligations.

The court held that The Hartford was not liable for any of the fraudulent conveyance suits under the terms of its policy. Pursuant to both policies' interrelated claims provisions, as all three suits related to the same alleged fraudulent conveyance, they were deemed a single claim first made on January 3, 2000, during Reliance's amended policy period. The insured nonetheless argued that it reasonably expected The Hartford's policy to cover claims made during the insurer's amended policy period because The Hartford did none of

the typical underwriting acts of a successor insurer, it continued to administer claims under the original policy pursuant to an agreement with Reliance, and it did not require the insured to pay any additional premium for the second policy. The court rejected the insured's argument on the grounds that a sophisticated insured would understand (i) the difference between claims servicing and assumption of liability, and (ii) that by splitting the premium the insurers indicated that they were splitting the risk rather than transferring it entirely to The Hartford.

The insured argued that the interrelated wrongful acts provision should not apply in this case because the purposes for which such provisions are included in policies did not apply here. The court held that even if it were to make application of the provision contingent upon the purposes behind it, applying the provision in this case would serve the purpose of allowing an insured to obtain coverage under a new policy despite facing ongoing liability exposure from existing claims. Finally, the court opined that The Hartford's contractual arrangements with Reliance, which conveyed renewal and other rights and assigned claims administration and reinsurance responsibilities, did not obligate The Hartford to cover Reliance's obligations under the amended policy.