

Court Holds Policy Exhausted By Payment of Claim Expenses

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The United States District Court for the Northern District of Ohio, applying Ohio law, has granted a professional liability insurer's motion to dismiss a coverage action where the insurer indisputably paid out defense costs up to aggregate policy limits. *Toledo Newspaper Unions Blade Pension Plan & Trust Fund v. Nutmeg Ins. Co.*, 2010 WL 1687706 (N.D. Ohio Apr. 26, 2010).

The insured, an investment firm, settled an underlying case brought against it by a newspaper pension plan and trust fund (the "Plan") and, as part of the settlement, assigned its claims under an investment management consultants errors and omissions policy. The policy provided that claim expenses incurred in the defense of a suit would reduce and could exhaust the policy's \$1 million aggregate liability limit. The Plan conceded that the insurer had paid \$1 million in legal fees and expert witness costs incurred in connection with the defense of the underlying suit but asserted entitlement to "additional funds" beyond the policy limit for attorneys fees and other expenses "necessarily incurred in the defense."

The court rejected this contention, noting that the policy gave "repeated warnings" that the insurer was not obligated to provide coverage above the \$1 million policy limit in defense of an underlying action. The court further rejected the Plan's argument that the lack of a policy definition for "claims expenses" created an ambiguity. Finally, noting that the insurer owed no defense obligation beyond the \$1 million policy limit, the court rejected the Plan's argument that the insurer had breached its fiduciary duties to the insured.