

Declaratory Judgment Action Not Ripe for Adjudication

June 2005

The United States District Court for the Western District of Washington, applying Washington law, has granted a professional liability insurer's motion to dismiss, holding that the insured's declaratory judgment action was not ripe for adjudication because key issues related to the insured's liability in two underlying securities litigations had not been decided. *Amazon.com, Inc. v. Underwriters at Lloyd's London*, 2005 WL 1312046 (W.D. Wash. June 1, 2005).

The policyholder company obtained primary and excess D&O insurance from a number of carriers, with a primary layer of \$10 million and \$50 million in excess layers. Two securities class actions were filed against the company that contained allegations that the company issued fraudulent statements to inflate the price of its securities and sold convertible securities at inflated prices. Prior to reaching settlement in either class action suit, the company brought this declaratory action alleging that its efforts to reach settlement were "hampered" by one excess carrier's refusal to cooperate in the settlement. The excess carrier asserted that the company's action was not ripe for adjudication, that the policies did not cover the type of securities claims alleged in the underlying class actions, that the company had to submit its claims to arbitration and that the company had not met all conditions precedent for bringing suit.

The district court granted the excess insurer's motion to dismiss, rejecting the company's argument that its declaratory judgment action was ripe for adjudication because a resolution of indemnity issues would aid in settling the underlying cases. The court found that too many outstanding issues of liability remained (such as "whether Section 11 or 12 violations will be found in the underlying class disputes") and that "it would be difficult for this Court to render anything but an advisory opinion." The court added that the present action was "completely hypothetical" because any determination that it reached could be rendered "moot" if the Section 11 and 12 securities issues were resolved in the company's favor or if determinations made in the underlying actions triggered other policy exclusions.

For more information, please contact us at 202.719.7130.