

ALERT

Claim Related Back to Previously Settled Action

October 11, 2011

Applying Texas law, the Court of Appeals of Texas has held that a lawsuit alleging similar wrongful acts that were the subject of an earlier-filed suit related back even though the conduct at issue in the second action all occurred after the first action had settled. *Reeves County v. Houston Casualty Co.*, No. 08-09-256-cv, __ S.W.3d __, 2011 WL 4062479 (Tex App. Sept. 14, 2011).

The underlying action involved a suit against a county, which was insured under a claims-made nonprofit organization liability policy issued for the period of December 1, 2004 to December 1, 2005. The claimant previously had brought suit against the county in 2001, alleging that the county had violated his civil rights, including his constitutionally protected right to free speech, and interfered with his ability to operate as a bail bondsman in doing so. The suit settled in 2002.

Three years later, during the period of the policy at issue, the bail bondsman again brought suit against the county alleging that the county continued to interfere with his business in retaliation for the bail bondsman's exercise of his constitutional rights. The county tendered the claim to the insurer, which denied coverage on the grounds that second action related back to the first action such that the second action did not constitute a claim made during the policy period. In support of this position, the insurer relied on the policy's interrelated actions provision, which stated: "A Claim or Claims by one or more claimants made against one or more Insureds which arise out of the same Wrongful Act or interrelated Wrongful Acts shall be deemed to be a single Claim and shall be deemed to have been made when the first of such Claims is made. Any interrelated Wrongful Acts shall be deemed to have been committed when the

Practice Areas

- D&O and Financial Institution Liability
- E&O for Lawyers, Accountants and Other Professionals
- Insurance
- Professional Liability Defense

first of any such Wrongful Acts was committed.”

In the coverage litigation that followed, the court rejected the county’s argument that the interrelated actions provision was an “exclusion” upon which the burden of proof rested with the insurer. The court noted that the provision did not appear in the section of the policy that listed exclusions. The court also found that, as part of its burden to demonstrate that the claim was within the scope of coverage afforded, the county had to establish that the claim constituted one deemed first made during the policy period.

Next, the court determined that while the policy did not define “interrelated wrongful acts,” it must apply “the ordinary and generally accepted meaning” of the term “related.” According to the court, it was plain on its face that the complaint filed in the second action alleged facts that were related to those alleged in the first action. In this regard, the court pointed out that both actions presented similar facts regarding the county’s purported retaliation against the bail bondsman for exercising his constitutionally protected right to speak out against the county sheriff and that both actions involved the same parties. The court rejected the insured’s argument that suits were not related under the policy because the earlier action had settled and the later action necessarily only involved conduct alleged to have occurred after the settlement.