

ALERT

Complaints of Discrimination Based on National Origin Alleging "Same Basic Acts" of Discrimination Deemed Interrelated

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The United States District Court for the District of Hawaii has held that an insurer had no duty to defend an insured under a claims-made professional liability policy when multiple complaints of discrimination based on national origin had been filed against the insured prior to the inception of the policy. The court found that similar discrimination complaints filed during the policy period arose from interrelated wrongful acts and thus were deemed to be a single claim first made prior to the inception of the policy. *MF Nut Co. v. Cont'l Cas. Co.*, 2013 WL 164425 (D. Hawaii Jan. 15, 2013).

The insurer issued a claims-made professional liability policy to a macadamia nut farmer in May 2008. In April 2006, three employees of a contractor for the insured nut farmer filed charges with the Equal Employment Opportunity Commission (EEOC) against the insured alleging discrimination and harassment based on the workers' national origin. Other employees later filed 28 additional charges alleging similar discrimination following the inception of the professional liability policy. The insured tendered these claims to its insurer. The insurer orally informed the insured in August 2008 that it would provide a defense to the insured, but the parties disputed whether the insured had received a written reservation of rights from the insurer in October 2008. In August 2010, the EEOC determined that there was cause to believe that the insured engaged in illegal discrimination with respect to all claims and subsequently made a settlement offer. In September 2010, the insurer withdrew its defense and denied coverage for the charges. The insured brought suit against the insurer, seeking a declaratory judgment that it was

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entitled to a defense and indemnification. The policyholder also contended that the insurer was estopped from withdrawing its defense or denying its indemnity obligation.

In the coverage litigation, the court held that the insurer had no duty to defend or indemnify because the discrimination claims against the insured arose out of interrelated wrongful acts and were therefore deemed to be a single claim first made prior to the inception date of the policy. The policy defined interrelated wrongful acts as "any Wrongful Acts which are logically or causally connected by reason of any common fact, circumstance, situation, transaction or event." The court determined that the definition of interrelated wrongful actions was broad and not ambiguous. Because all of the complaints submitted to the EEOC alleged the "same basic acts" and involved discrimination based on the workers' national origin, the court determined that they were interrelated wrongful acts. Given that the first EEOC charge was filed in April 2006, prior to the inception date of the policy, all related claims were deemed to have been first made on that date and thus outside the policy period of the policy. Accordingly, the court found that the insurer did not have a duty to defend or indemnify under the policy.

The court also determined that the insurer was not estopped from denying its duty to defend under the policy. The court did not find evidence that the insurer sent a reservation of rights letter in October 2008 and determined that the first reservation of rights letter was received in August 2010. However, the court also found no evidence that there was detrimental reliance or prejudice, because the insured was also receiving a defense from another insurer and was allowed to continue with its choice of counsel in the action.

The court also rejected a claim for breach of the covenant of good faith and fair dealing because the insurer denied coverage based on the reasonable belief that coverage was precluded due to the interrelated wrongful acts occurring prior to the inception date of the policy.

The opinion is available [here](#).