

ALERT

Contract Exclusion Does Not Apply to Breach of Settlement Agreement

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An Idaho federal court has held that a contract exclusion does not bar coverage for purported wrongful acts that resulted in the breach of a settlement agreement under Idaho law. *Idaho Trust bank v. Bancinsure, Inc.*, 2014 WL 1117027 (D. Idaho Mar. 20, 2014). The court also determined that an original and amended complaint were related and one Claim under the policy.

Following the filing of a lawsuit, the insured bank entered into a settlement agreement concerning the financing for a construction project. The agreement contained mutual releases that were to become effective upon the bank's issuance of future loans. After a dispute arose regarding one of the promised loans, the claimant filed an amended complaint with a count for breach of the settlement agreement. The jury ultimately returned a verdict in favor of the insured on the breach of settlement agreement count, the only count that proceeded to trial.

The insurer initially acknowledged a defense obligation as to the original complaint. After the court dismissed all counts in the action other than the breach of settlement agreement count, the insurer denied coverage based on the policy's contract exclusion, which barred coverage for claims arising out of "any assumption by the company . . . of any liability or obligation under any contract or agreement, or the failure to perform any contract or agreement, unless such company or insured person would have been liable even in the absence of such contract or agreement."

The court first held that the original complaint and amended complaint alleged interrelated wrongful acts (*i.e.*, acts that have as a "common nexus any fact, circumstance, situation, event, transaction or

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series of facts, circumstances, situations, events or transactions”) and thus constituted a single claim made at the time the claimant filed the original complaint. According to the court, the complaints were interrelated because they involved the same parties, the same lending relationship, and the same underlying subject matter, and the later complaint would not have existed but for the attempts to settle the original complaint.

The court also held that the contract exclusion did not apply, agreeing with the insured’s argument that the policy provided coverage for “lending wrongful acts,” which included lending acts that arise from contracts. Even though the post-settlement lending relationship between the parties resulted from the settlement agreement, the court determined that the insured’s conduct in connection with the subsequent loans that unraveled the agreement constituted a lending wrongful act. The court further opined that applying the exclusion would eliminate coverage for the risk the parties intended to cover.

The opinion is available [here](#).