



NEW TEXAS CLIENT ALERT – September 20, 2011

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First Reported Texas Decision Construing the “Interrelated Acts” Provision of a Non-Profit Entity Claims-Made Policy; Suit No. 2 Held to be “Interrelated” to Previous Settled Suit No. 1; No Duty to Defend and No Coverage

Most “Claims-Made” liability insurance policies contain “Interrelated Acts” provisions that attempt to define whether and under what circumstances separate claims made against the insured at two different points in time will nevertheless be deemed to be “interrelated” so as to be considered parts of a single claim instead of two different claims. This issue obviously potentially affects whether the “per claim” v. aggregate limit applies, the number of “per claim” deductible that must be satisfied and, of course, which policy applies to the later made claim, *i.e.*, the policy in force when the later claim is made or instead an earlier policy that was in force when the initial and interrelated claim was made.

In *Reeves County v. Houston Casualty Co.*, 2011 WL 4062479 (Tex. App.—El Paso, Sept. 14, 2011), the El Paso Court of Appeals held that a suit filed in 2005 by a local bail bondsman alleging that the Reeves County Sherriff had retaliated and discriminated against him in favor of competing bail bond firms and an earlier 2001 case that the bail bondsman filed against the County and the Sherriff which the County and Sherriff had settled were interrelated. The 2001 suit alleged that the County and Sherriff had violated the bail bondsman’s civil rights by discriminating against him for exercising his First Amendment freedom of speech rights to criticize the County and Sherriff. In the settlement of the 2001 suit, the County and Sherriff had agreed to stop doing so. In the 2005 suit, the bail bondsman alleged that notwithstanding such prior settlement of the 2001 suit, the County and Sherriff had continued to discriminate against the Plaintiff in retaliation for his filing of the first suit. Thus, all of the acts complained of in the second suit necessarily were new acts committed after the first suit had been settled. Nevertheless, the court held that the two suits were interrelated and thus the 2005 carrier had no coverage or duty to defend.

Of note, the 2005 policy involved did not define “interrelated.” Instead, it simply provided that any “claim” or “claims” which arose out of the same “wrongful act” or interrelated “wrongful acts” would be deemed to be a single “claim” and deemed to have been made when the first of such “claims” was made and that any interrelated “wrongful acts” shall be deemed to have been committed when the first such “wrongful act” was committed. Absent any definition of “interrelated” in the policy, the court looked to Texas insurance case law construing the term “related” and holding that “related” should be given its ordinary, dictionary meaning of “having a logical or causal connection.” Accordingly, the court held that it would likewise give the term “interrelated” its ordinary meaning. In so doing, the court noted that both suits complained of essentially the same allegedly discriminatory and retaliatory course of conduct by the Sherriff and were between the same essential parties.

Practical Pointers—Obviously, the “Interrelated Acts” issue will usually be very fact specific and policy language-specific. Here the policy contained no definition of what was meant by “interrelated” so the court defaulted to the plain and ordinary meaning, as it saw it, of the terms. The result could be different in a case involving more detailed policy language. Likewise, the result here was pretty easy for the court to reach in that the two suits were between the same



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parties and essentially complained of the same conduct. Altering those variables a little does not necessarily lead to a different result; altering them a lot could. At the end of the day, whether two claims are “interrelated” or not will often just end up being an “eye of the beholder” judgment call by the court based on all the facts, circumstances, and allegations involved.

If you wish to discuss any insurance-related issues or needs, please feel free to contact Schubert & Evans, P.C. at 214.744.4400 or visit our website at www.schubertevans.com.