

Alert

November 15, 2022



Seventh Circuit Affirms Ruling that Notice of an Amended Complaint was Untimely

On October 24, 2022, the U.S. Court of Appeals for the Seventh Circuit, in *Hanover Ins. Co. v. R.W. Dunteman Co.*, 2022 WL 13769371, --- F.4th --- (7th Cir. Oct. 24, 2022) (applying Illinois law), affirmed a district court's holding that an insured's notice of an amended complaint was untimely and therefore coverage was unavailable under two consecutive D&O claims-made and reported policies. *Hanover Ins. Co. v. R.W. Dunteman Co.*, 446 F. Supp. 3d 336 (N.D. Ill. 2020).

Discussion

The insurer had issued two consecutive claims-made and reported policies in 2017 and 2018. A complaint was filed against an insured in 2017. Then in 2018, an amended complaint was filed, broadening the factual allegations and adding new insured defendants and theories of liability. At this point, the insureds notified their insurer and sought coverage under the 2018 policy. In turn, the insurer denied coverage, contending that the claim was first made in 2017 and was not timely reported. The district court agreed, reasoning that the original complaint qualified as a reportable claim under the 2017 policy because it contained allegations of wrongful acts against an insured; and that amendments to a complaint in the same civil action could not create a new claim. The district court also relied on the policy's claim-aggregation provisions, namely its "Related Wrongful Acts" and "Related Claims" provisions, to hold that the original and amended complaints were a single claim reportable when the original complaint was first made in 2017.

The Seventh Circuit affirmed; and, in so doing, rejected the insureds' argument that the amended complaint was a separate claim first made in 2018. Although the amended complaint included new allegations, the court found that the policy's aggregation provisions treated them as related and part of the original complaint. The court also reasoned that the 2017 complaint took the form of a "[c]ivil proceeding commenced by the service of a complaint;" that amendments to a complaint do not commence a new action; and that "a civil proceeding encompasses far more than just the allegations and theories contained in a first pleading." Moreover, the court rejected the insureds' contention that the amended complaint was a separate claim because it added new insureds as defendants, reasoning that policy language tied the amended complaint to the original complaint because the latter was also asserted against an insured.

Analysis

R.W. Dunteman is an important ruling for a few reasons. First, it applied common terms and provisions found in Directors and Officers (D&O) policies in a straightforward manner. Second, it rejected the insureds' arguments as undermining the purpose and ordinary operation of claims-made insurance. In this regard, *R.W. Dunteman* emphasized the distribution of risk inherent in claims-made insurance, stating that the "purpose of the reporting requirement would be seriously undermined if later iterations of [a] complaint based on facts learned during discovery could excuse the insured's failure to timely notify the insurer of [a] lawsuit when it was first filed."

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