CARLTON FIELDS

Court Finds Statutory PIP Demand is "Related Claim" to Later-Filed Class Action Suits

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A federal court has ruled that a liability policy's "Related Claims" provision should be interpreted broadly, and that a sophisticated policyholder (in this case, an insurance company) should be bound by its clear terms. On September 30, the U.S. District Court for the Southern District of Florida found that a pre-suit demand letter under Florida's Personal Injury Protection (PIP) Statute constituted a "related claim" to a later-filed class action, precluding coverage under two claims-made professional liability insurance policies. In *Direct General Insurance Company v. Houston Casualty Company and National Specialty Insurance Company*, Case No. 14-20050 (S.D. Fla. Sept. 30, 2015), the court granted summary judgment in favor of two defendant-insurers.The policyholder, Direct General Insurance Company, is a Tennessee company that issues automobile insurance policies providing PIP benefits under Florida law. The insurers, National Specialty Insurance Company, represented by Carlton Fields, and Houston Casualty Company, each provided Direct General with $10 million in coverage under a program of professional liability insurance. The policies offered claims-made coverage for claims first made during the policy period of March 30, 2008 to March 30, 2009. Notably, the policies provided that all related claims are treated as a single claim first made when the earliest related claim is made. In late 2013, Direct General reported over 70,000 individual PIP demands to its insurers as "related claims"

to the class actions. It alleged that the PIP demands—most of which only demanded a few hundred dollars—involved the same "wrongful acts" as the class actions; namely, the improper application of the amendment to the PIP statute. Before the insurers could provide a coverage opinion, Direct General filed a declaratory judgment suit seeking coverage for both the class actions and the 70,000+ individual claims amounting to tens of millions of dollars in alleged loss. During discovery, the insurers obtained several PIP demands that were served on Direct General after the amendment of the statute but *before* the inception of the policy period. Direct General admitted that these claims were adjusted the same way as the later-filed claims, but alleged that the claims were "routine, garden-variety PIP demands" which did not specify the wrongful acts alleged in the class actions. The insurers countered by arguing that if the later-filed individual PIP demands were related claims to the class actions, then the pre-policy period PIP demands must also be related claims. And, if the earliest of the related claims was made before the policy period, then all of the related claims must be deemed first-made before the policy period's inception. The court agreed with the insurers and found that the related claims were all deemed first-made before the policy period. First, the court analyzed the policy's broad language stating that "related claims" include "all Claims for Wrongful Acts based on or directly or indirectly arising out of or resulting from the same or related… series of facts, circumstances, situations, transactions, or events." The court noted that even if the later-filed class actions arose out of different, more detailed legal theories, the policy did not limit related claims to claims arising out of the same legal theories. The court characterized the related claims definition as "very broad" and noted that the PIP demands, whether large or small, all "indirectly arose…out of the same circumstances"—the misapplication of the amendment to the PIP statute. Direct General also attempted to find ambiguities in the policy and argued that its liability insurers "do[ ] not need or want notice of the typical claims that the policyholder is adjusting for its own insureds." The district judge rejected this argument, stating that "[a]ll the Court can do is give the Policy the interpretation called for by the plain meaning of its terms.

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