Why Suing Every Insurance Company in Sight Does Not Always Work

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There is a common misconception that suing everyone in sight is a good idea. Yes, if you don’t know exactly what related companies (or individuals) ultimately may be responsible for the loss it may make sense to cast a wider net (especially if the limitations period is approaching). But if it is obvious who the proper parties are, why bother to sue those who have no real involvement or liability. This issue arises in all types of litigation, including insurance coverage litigation, where policyholders sue the obvious policy issuing company and often add several affiliates and group members of the policy issuing company’s group.

In insurance coverage litigation, the policyholder should have very little trouble ascertaining who the proper insurance company is. It generally says so right on the policy. But to be fair, some policies issued out of an insurance group may list multiple carriers and may use trade names on the policy wording. In other cases, if the original insurance company has been bought or sold or merged, it may be more difficult to suss out the right company name. When this happens, things could get confusing and naming multiple parties may make sense.

In a recent case, a court was presented with a motion to dismiss by various members of an insurance group who were sued even though it was clear that only one member of the insurance group had issued the policy. In this case six companies in the group were named as defendants along with the actual policy issuing company. The policy issuing company issued a professional liability insurance policy for securities broker-dealers and investment advisors. Investors of the policyholder brought claims against the policyholder and the policy issuing company declined coverage relying on an exclusion for options and derivatives.

The policyholder brought a coverage action against an affiliate of the policy issuing company and counsel advised the policyholder of the error. Rather than amend the complaint to just name the policy issuing company, the policyholder kept the existing defendant and added the policy issuing company along with five other entities from the insurance group as defendants. In its amended complaint, the policyholder defined each of the companies individually and jointly as the name of the entire group. The defendant insurers, other than the policy issuing carrier, moved to dismiss.

As the court noted, the policy expressly identified the policy issuing carrier. The policyholder also admitted that it had no general personal jurisdiction over the various defendants. The court found that the policyholder’s “bare allegations” against the six affiliates were rebutted by an affidavit submitted by the carrier group. The policyholder argued that discovery was needed before any party was dismissed to that it could determine if specific personal jurisdiction existed. The court rejected this argument holding that the policyholder was trying to assert claims against entities that did not issue the policy. The court found that references to trade names, copyright holders or other entities on or in conjunction with policy forms “will not be taken out of context to create ambiguity where there is none.”

Notably, the court stated that even if it were to exercise jurisdiction over these six affiliates, the claims asserted against them fail as a matter of law and are not plausible on their face. The court held that the policyholder’s effort to obscure the actions of each of the defendants by collectively referring to them and the policy issuing company by the group name cannot overcome the fact that the policy issuing company issued the policy and not
the others. Because the policy issuing company was the insurer and no relationship existed between the policyholder and the six affiliates, the relevant causes of action failed as a matter of law. The case is Allegis Investment Servs., LLC v. Arthur J. Gallagher & Co., No. 2:17 CV 515 DAK, 2017 U.S. Dist. LEXIS 209257 (D. UT. Dec. 19, 2017).

Where there is no confusion as to the policy issuing company there is no reason to bring claims against group members that have no involvement in the policy. Collateral litigation over jurisdiction and viability of claims against parties that never should have been sued makes little sense when it is clear who the insurer really is.

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