

Multiple Proceedings Against Condo Association Are a Single Claim Under D&O Policy

Great American Ins. Co. v. State Parkway Condominium Assoc.

In a declaratory judgment action in which a condominium association seeks a defense and coverage from primary and excess insurers under various types of policies, the U.S. District Court for the Northern District of Illinois recently found that multiple proceedings a unit owner filed against the association constituted a single Claim under the association's directors and officers liability coverage, triggering only one, rather than several, D&O policies. The court therefore granted partial judgement on the pleadings to the association's D&O insurer, which was represented in the case by Aronberg Goldgehn. *Great American Ins. Co. v. State Parkway Condominium Assoc.* (Case No. 17-cv-3083, N.D. Ill, 9/11/18).

This association purchased D&O coverage for consecutive policy periods from May 2006 through May 2012. During the first policy period ("2006-07 Period"), a condo owner filed a charge with the Illinois Department of Human Rights, alleging that the association failed to accommodate the owner's disability. During a later policy period, the condo owner filed a counterclaim against the association in a suit the association brought against the owner. And the owner amended that counterclaim in a subsequent policy period. Then, in yet another policy period, the condo owner filed another IDHR administrative charge against the association, asserting discrimination and retaliation claims that he subsequently included in a Federal court suit against the association.

Travelers Casualty and Surety Company of America ("Travelers"), the D&O insurer to whom the association tendered all of the owner's actions, defended the association and others in all of the proceedings. On Travelers' exhaustion of the policy limit for the 2006-07 Period, Travelers advised the Association that no further coverage was available for defense of the actions. The Association disagreed with Travelers' position, and sued Travelers in a declaratory action another of the association's insurers previously filed. The association asserted that multiple Travelers policies were triggered for coverage because the unit owner filed several actions in several different policy periods, and the association contended they constituted separate and unrelated Claims.

In granting Travelers' motion for judgment on the pleadings, the court agreed with Travelers that its policies' "related wrongful acts" language applied to the acts alleged in the unit owner's various proceedings against the association. Consequently, all of the actions were deemed to be a single Claim made on the date of the first Claim, i.e. during the first 2006-07 Period.

The *State Parkway* court first rejected the association's argument that the term "related wrongful act" is ambiguous. The court noted that the term was defined in the Travelers policies, and the court cited substantial authority from the Northern District finding similarly defined terms unambiguous. The court then proceeded

to find that all of the condo owner's proceedings arose out of the same facts, circumstances or situations. In its initial IDHR charge against the association, the unit owner alleged that the association failed to accommodate his hearing disability and discriminated against him based on this disability. And the court traced the owner's allegations in all of the subsequent proceedings, finding that each of the matters arose from, were based on, or related to, the association's allegedly discriminatory and retaliatory conduct against the condo owner.

Comment

The *State Parkway* ruling is another example of a continuing line of recent decisions from the Northern District, and other courts, finding terms

like "related wrongful act" unambiguous, and directly applying them to in situations (like this), where multiple actions are linked by common facts, events or circumstances.

If you have any questions about this Update, please contact the author listed below or the Aronberg Goldgehn attorney with whom you normally consult:

Christopher J. Bannon
cbannon@agdglaw.com
312.755.3175

Christopher J. Bannon • 312.755.3175 • cbannon@agdglaw.com
Lisa J. Brodsky • 312.755.3177 • lbrodsky@agdglaw.com
Thomas K. Hanekamp • 312.755.3160 • thanekamp@agdglaw.com
Amber O. LaFavers • 312.755.3170 • alafevers@agdglaw.com
Catherine Warren • 312.755.3157 • cwarren@agdglaw.com
Daniel J. Berkowitz • 312.755.3167 • dberkowitz@agdglaw.com
Lindsay P. Lollo • 312.755.3171 • llollo@agdglaw.com
Danielle L. Rosenberg • 312.755.3172 • drosenberg@agdglaw.com
Mark A. Swantek • 312.755.3141 • mswantek@agdglaw.com