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Coverage Owed For Settlement Of Alleged Wage Suppression Claims In Antitrust Class Action

The Sixth Circuit held recently that a hospital's insurer must pay for the settlement of antitrust class action claims brought by nurses against the hospital for allegedly keeping wages down after finding that the settlement did not constitute disgorgement under the terms of the hospital's insurance policy. *William Beaumont Hosp. v. Fed. Ins. Co.*, No. 13-1468, 2014 WL 185388 (6th Cir. Jan. 16, 2014).

Background

Two registered nurses brought a class action against eight Detroit-area hospital systems, including William Beaumont Hospital ("Beaumont"). The nurses alleged that the hospitals violated the Sherman Act and improperly depressed the nurses' wages.

Beaumont tendered the lawsuit to its insurer, Federal Insurance Company ("Federal"). In accordance with the terms of the policy, Federal advanced Beaumont $3.4 million for Beaumont's defense costs.

While Beaumont was negotiating a settlement with the nurses, Beaumont sued Federal, seeking a declaration that the policy also obligated Federal to indemnify Beaumont. Federal responded to the lawsuit, claiming that the settlement was not a covered loss under the policy because it amounted to a disgorgement of monies from Beaumont. While the coverage action was pending, Beaumont settled the antitrust action and, subject to a reservation of right to reimbursement, Federal paid approximately $9 million in indemnity to Beaumont.

The district court then granted judgment in favor of Beaumont in the coverage action, finding that the policy required Federal to indemnify Beaumont for the settlement. Federal appealed and the Sixth Circuit affirmed.

The Sixth Circuit's Opinion

Federal argued on appeal that the amounts paid to the nurses were not covered because the policy specifically excluded coverage for amounts paid as disgorgement. According to Federal, "the nurses' claims arose from Beaumont's gaining of profit, remuneration, or advantage to which it was not entitled and the settlement was a disgorgement of that advantage." Thus, because the policy provided that loss "shall not include disgorgement," Federal contended that the settlement could not qualify as loss under the policy and therefore was not covered.

Beaumont argued in response that Federal ignored the essential nature of "disgorgement." Disgorgement, as Beaumont explained, involves money unlawfully *acquired*, which is fundamentally different in its legal character from money wrongfully *retained*. Beaumont contended that the settlement was for money the nurses claimed Beaumont to have unlawfully retained, not unlawfully acquired. Because disgorgement refers to money wrongfully acquired, Beaumont argued that the settlement was not for disgorgement and that it was therefore covered.

The Sixth Circuit agreed with Beaumont. After reviewing definitions from *Black's Law Dictionary* and *Webster's Third New International Dictionary*, the court found that the settlement was not a disgorgement because Beaumont "never gained possession of (or obtained or acquired) the nurses' wages illicitly, unlawfully, or unjustly." To the contrary, Beaumont allegedly "*retained* the due, but unpaid wages unlawfully."

The court explained that its decision was not based on "mere semantics" since "[r]etaining or withholding differs from obtaining or acquiring." Here, the hospital never acquired money from the nurses and therefore was not disgorging any ill-gotten gains in the settlement. Accordingly, the court rejected Federal's argument and found that the policy covered Beaumont's settlement of the underlying antitrust action.

Insurance Implications

The *William Beaumont* decision illustrates the importance of reviewing all available insurance policies when faced with an employment-related lawsuit. Here, Beaumont recovered more than $12 million under its policy based on a subtle distinction in policy language. Employers and other companies alike should remain vigilant about pursuing insurance recovery for all potentially covered claims and should not be dissuaded from pursuing coverage based on what may appear to be a subtle or "technical" argument. Indeed, as the Sixth Circuit made clear in *William Beaumont*, the distinction between disgorgement and restitution is not technical at all, and Beaumont's reading of the policy was, in fact, soundly correct.

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