

Washington District Court Rules That Two Actions Were Not “Related Claims” Under D&O Policy (Insurance Law Alert)

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A Washington district court rejected an insurer’s contention that two actions against directors of a software company were “related claims” and therefore subject to coverage under only the earliest policy. *Smartsheet, Inc. v. Fed. Ins. Co.*, 2022 WL 3160379 (W.D. Wash. Aug. 8, 2022).

All of the claims at issue involved allegations that directors of Smartsheet duped investors into selling their shares before the company went public. A class action complaint brought in December 2019 alleged that a Smartsheet director, Ryan Hinkle, failed to disclose knowledge relating to the company’s plans to go public after a tender offer. Separately, in June 2018, Megan Colacucio served an arbitration demand on her ex-husband, Brett Frei, a different Smartsheet director, alleging that she was tricked into selling her shares to Frei as part of a divorce settlement for significantly less than the tender offer price.

Federal issued a series of D&O policies to Smartsheet during this time frame. The 2018-2019 policy provided that:

All Related Claims [Claims for Wrongful Acts based upon, arising from, or in consequence of the same or related facts, situations, transactions or events or the same related series of facts, situations, transactions or events] shall be deemed a single Claim made in the Policy Period in which the earliest of such Related Claims was first made.

Federal argued that the arbitration demand and the class action were related claims and must be treated as a single claim under the 2018-2019 policy. In contrast, Smartsheet contended that the arbitration demand was not a “claim” within the meaning of the policy because it arose out of personal conduct in the underlying divorce settlement. The court rejected Smartsheet’s assertion, concluding that the arbitration demand constituted a “claim” because it accused Frei of breaching his fiduciary duties as director of Smartsheet.

However, the court concluded that the arbitration demand and class action were unrelated and distinct claims under Federal’s policies. The court emphasized that the two actions shared “only limited overlap” relating to the alleged misrepresentations pertaining to the tender offer. More specifically, the court explained that the arbitration demand focused on Frei’s omissions to Megan Colacucio individually, relating to her ability to sell her shares in the tender offer rather than in the divorce settlement, whereas the class action concerned Hinkle’s alleged concealment from investors of the plans to take Smartsheet public after the tender offer. Given the different injuries and directors involved

and the absence of any allegations of a common scheme between Hinkle and Frei, the court ruled that the two actions “share[d] little logical connection.” While the court acknowledged some overlap and similarity between the two actions, it deemed that overlap insufficient to meet the “related claims” standard.

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