

'Other Similar Insurance' Exclusion Does Not Apply to a Renewal Policy in the Context of an Automatic Extended Reporting Period Provision

Insurance Law Update

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U.S. District Court for the District of Massachusetts

The federal district court, in *New England Environmental Technologies v. American Safety Risk Retention Group, Inc.*, ___ F.Supp.2d ___, 2010 WL 3622250 (D. Mass. Sept. 15, 2010), held that a denial of coverage pursuant to an Automatic Extended Reporting Period (AERP) containing an "other similar insurance" exclusion is improper when applied to a renewal policy.

New England Environmental Technologies (NEET) had purchased "claims made" policies covering three subsequent policy periods from insurer American Safety Risk Retention Group, Inc. Each policy contained a 30-day AERP provision that would "only apply if no other similar insurance is in force at the time of the AERP."

In February 2008, a demand letter was received by NEET regarding leaking heating oil tanks at an apartment complex. The first policy expired on March 2, 2008 at 12:01 a.m., at which time the renewal policy took effect. NEET did not forward the demand letter to its insurance agent until March 6, 2008, which was then transmitted to American Safety on March 7, 2008.

American Safety then denied coverage for the claim under the "claims made" policies because: (1) it was made against NEET during the 2007-2008 policy period but was not reported until after that policy had expired; and (2) it was reported during the 2008-2009 policy period but had been first made against NEET prior to the 2008-2009 policy's inception. American Safety further determined that 2007-2008 policy AERP provision did not apply because NEET maintained "other similar insurance in effect after March 2, 2008" – referring to the 2008-2009 renewal policy in effect at the time.

The district court overturned American Safety's denial under the 2007-2008 policy pursuant to the AERP. The court concluded that NEET did report its claim within the 30 days allowed, and that the "other similar insurance" provision did not implicate the 2008-2009 renewal policy. In interpreting this phrase, the court held that the language "logically implies to the policyholder that the AERP is effective unless the policyholder's relationship with American Safety ends," but not if the policyholder simply renews.

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