

by Donald Glazier and Tara Cummins

What a Difference a Few Days Make

Recent days have not been good for Bear Stearns. In two instances, the firm learned that, in terms of dollars, a few days can make a big difference. First, in less than a week, Bear's stock price plummeted, resulting in shareholder losses in the billions. Second, and much less publicized, Bear Stearns learned that its professional liability insurance could be compromised in a matter of days.

In both instances, a small time period wrought massive financial consequences. And in the latter instance, inadequate timing resulted in a failure to recover insurance. An important lesson can be learned from the firm's unfortunate failure to pay close attention to the details of insurance coverage. In many instances, those details dictate whether or not a policy will perform as expected.

Policy Provisions and the Settlement Saga

Bear Stearns purchased professional liability insurance from a number of insurers totaling \$50 million in coverage. The policies were in a layered program with Vigilant (a part of the Chubb Group, hereinafter, "Chubb") providing the primary \$10 million. Federal and Gulf insurance companies filled out the balance of the \$40 million in excess insurance coverage. The excess insurers followed the terms and conditions in the primary Chubb form.

Like most policies, the Chubb policy form contained a claim settlement provision allowing Bear Stearns to settle claims under a named dollar threshold without first obtaining insurer approval. However, for any claim over that amount, Chubb would have to provide prior approval. The specific wording in policy stated:

The insured agrees not to settle any Claim, incur any Defense Costs or otherwise assume any contractual obligation or admit any liability with respect to any Claims in excess of a settlement authority threshold of \$5,000,000 without the Insurer's consent, which shall not be unreasonably withheld ... The insurer shall not be liable for any settlement, Defense costs, assumed obligation or admission to which it has not consented.

In 2002, Bear Stearns, along with other financial institutions, was investigated by the SEC, NASD, NYSE, and state attorney generals into potential conflicts of interest involving research analysts. The investigation culminated in a settlement between Bear Stearns and the regulators. The settlement provided that Bear Stearns would agree to have a judgment entered against it totaling \$80 million, inclusive of a \$25 million penalty. Bear Stearns agreed not to seek insurance coverage for the penalty portion of the agreed judgment amount, but three days after entering into the agreement to settle, the firm sent letters to Chubb and the other carriers requesting consent to settle the claims.

After receiving Bear Stearns' request to settle, the insurance carriers declined to approve the settlement or pay for the claims. The insurers then filed an action in New York state court, seeking a declaration that the amounts sought by Bear

Stearns were not covered under their policies. The matter was litigated for quite some time. It worked its way through the trial and intermediate level New York state appellate courts, and ultimately found its way before the state's highest tribunal, the Court of Appeals. ¹The Court of Appeals was presented with a number of coverage issues to consider, but ultimately decided Bear Stearns' entire chance of recovery was based on its compliance with the policy's claims consent provision.

In reviewing the settlement approval provision contained in the Chubb policy, the court found that Bear Stearns breached the provision by waiting until after settling the claim with the federal and state regulators to seek insurer approval. The court provided no relief for Bear Stearns, stating,

As a sophisticated business entity, Bear Stearns expressly agreed that the insurers would "not be liable" for any settlement in excess of \$5 million entered into without their consent. Aware of this contingency in the policies, Bear Stearns nevertheless elected to finalize all outstanding settlement issues and executed a consent agreement before informing its carriers of the terms of the settlement. Bear Stearns therefore may not recover the settlement proceeds from the insurers.

Staying Focused on Insurance Considerations

Ultimately, Bear Stearns' delay of just three days resulted in *huge* financial consequences. As this case shows, failing to comply with even the most innocuous provision may lead to disastrous results.

A company must read, understand, and comply with all the provisions of its insurance policy to assure that the insurer's performance will meet expectations. With Bear Stearns' counsel more likely focused on resolving the serious and expensive matters with regulators, insurance issues may have taken a back seat. They've learned two costly lessons, two important lessons for every firm: insurance advocates are invaluable, and it is essential to always keep sight of insurance considerations amidst other business matters.

At Integro, our Claims and Coverage Counsel assist our clients throughout the entire insurance lifecycle, and our team is particularly effective during the claims process. Integro brings tremendous experience in claims resolution to help our clients work through insurance coverage issues, including those related to settling claims.

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About Integro

Integro is an insurance brokerage and risk management firm dedicated to serving the insurance and risk management needs of complex institutional risks. Integro has offices in North America, as well as in Bermuda and London. Its headquarter office is located at 1 State Street, 9th Floor, New York, NY 10004. 1-877-688-8701 www.integrogroup.com
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¹ Vigilant Insurance Company v. The Bear Stearns Companies, Inc., 2008 NY Slip Op 02080