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Client Alert: It Ends With Us Having No Coverage? – What Corporate Insureds Need to Know About Prior Knowledge Exclusions in Their Liability Policies

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On July 21, 2025, Harco National Insurance Company filed suit against its insureds, Justin Baldoni and his production company, Wayfarer Studios, seeking a declaration from the U.S. District Court for the Southern District of New York that it has no duty to defend or indemnify against a sexual harassment lawsuit, citing the policies' Prior Knowledge Exclusion.

The underlying lawsuit filed by actress Blake Lively made headlines last year, seeking damages for sexual harassment, retaliation, breach of contract, and defamation related to her work on the 2024 film, *It Ends With Us*. Notably, Lively alleges that she raised human resources concerns with Baldoni and others within the film's production company between April and June 2023. In a counterclaim, Wayfarer admitted that Lively submitted complaints as early as May 2023. These dates are significant because Wayfarer's July 2023 application for the 2023 Harco management liability policy warrants that the insured has "no knowledge of any act, error, omission, fact or circumstance which may give rise to a claim." Wayfarer made a similar warranty prior to the inception of its 2024 renewal policy.

Baldoni and Wayfarer tendered the lawsuit to Harco, seeking defense and indemnity for the underlying sexual harassment lawsuit pursuant to the policies' employment liability coverages. Harco disclaimed all coverage under either the 2023 or 2024 policies on the basis of alleged misrepresentations made on the policies' applications and the Prior Knowledge Exclusions, filing a declaratory judgment action to avoid providing coverage for Ms. Lively's suit. Harco's coverage position underscores the importance of understanding how prior knowledge exclusions and application warranties can apply to future claims.

Many liability policies, such as directors and officers policies, employment practices liability policies, and errors and omissions policies, are written on a “claims-made” basis. Claims-made policies respond to claims that are “first made” within the policy’s policy period, even if the alleged actions took place prior to the effective date of the policy. But, because insurance policies are designed to cover fortuitous events, underwriters seek to exclude known losses. This is accomplished in two ways: 1) as part of the application process, underwriters often ask insureds to disclose any prior events that may give rise to a potential claim, which they will explicitly then exclude from coverage; and 2) the policy itself may include a blanket prior knowledge exclusion, eliminating coverage for any circumstances actually known prior to the policy’s inception.

To avoid a denial from the insurer or even policy recission when a future claim arises, policyholders should pay close attention when completing insurance applications. The Baldoni/Wayfarer insurance case demonstrates that disclosures in the application process may have consequences. Policyholders should give these disclosures the time and attention they demand to ensure accuracy.

Even if the application does not require the insured to disclose knowledge of potential claims, many claims-made policies will include a prior knowledge exclusion. These exclusions differ in language and scope and are often subject to negotiation and interpretation. During the underwriting process, policyholders should pay close attention to these exclusions, as they can be fatal to future claims, and ask the following questions:

- Whose knowledge applies to the exclusion’s application?
- Is the language clear about what type of knowledge will trigger the exclusion?
- How will the knowledge standard be applied? *i.e.*, will it be evaluated on the basis of a subjective, objective, or mixed standard?

Finally, when confronted with circumstances that could reasonably be expected to result in a claim, the insured should consider whether it should report the matter to its then-current insurer. Most claims-made policies will permit insureds to provide a “notice of circumstances” even before a claim (usually defined as a suit or similar proceeding, or a demand for monetary relief) is actually made. If the circumstances ultimately do result in a claim, the insurer will then provide coverage for the claim as if the claim had been made during the policy period. Had Baldoni and Wayfarer provided notice of the complaints received in May 2023 to their then-current insurer, they may have avoided the coverage dispute they now must face.

Engaging experienced coverage counsel, brokers, and other risk management professionals to answer these and other questions during the claims and insurance binding process can protect insureds in the event that a claim arises and avoid a dispute with their insurance carrier.

Please contact Meagan Cyrus or a member of Shumaker’s Insurance Recovery Team with questions or for more information.