

# Settlement of Suits Alleging Breach of Contract Constitutes "Damages"

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The United States District Court for the District of Minnesota, applying Minnesota law, has held that settlements encompassing payments for breach of contract constituted "damages" as broadly defined in the operative policy. *UnitedHealth Group, Inc. v. Columbia Cas. Co.*, 2011 WL 6781007 (D. Minn. Dec. 27, 2011). In addition, the court held that several lawsuits were interrelated because they each alleged overlapping facts but did not constitute a single claim under the terms of the policy.

The insured brought suit against its excess carriers for refusing to indemnify the insured for settlement of multiple lawsuits. The insurers contended that no coverage was available for several of the settlements because the settlements were payments for the insured's breach of contractual obligations to third parties. One insurer also sought a declaration that it had no obligation to indemnify the insured for any further settlements because several actions constituted a single claim under the policy and it had exhausted the per claim limit of liability under its policy.

The court held that the policy provided coverage for settlements of actions for the insured's breach of contract to third parties because those amounts fell within the broad definition of "damages" under the policy. The policy defined "damages," in relevant part, as "compensation to others," including "compensatory, exemplary, enhanced, equitable, and punitive damages, settlements, and expenses . . . ." The court held that, although breach of contract damages are normally not covered, insurers could elect to provide coverage for breach of contract claims under Minnesota law and the definition of damages in the policy was broad enough to cover damages flowing from breach of contract.

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The court also held that several lawsuits were interrelated because they alleged common acts. The policy provided that "any damages or claims expenses incurred because of . . . a series of wrongful acts that have as a common nexus, any true facts, circumstance, situation, event, transaction or cause or series of causally connected facts, circumstances, situations, events, transactions or causes shall constitute a single claim." The court held that several lawsuits were interrelated because they each alleged purported modifications in provider billing codes to decrease the amount the insured owed to medical providers for services to the insured's clients. The court rejected the insured's contention that its conduct must have been actually wrongful to be interrelated because the policy defined "wrongful acts" to include those acts that are alleged to be wrongful and not actions that are actually wrongful. The court, however, refused to hold as a matter of law that the lawsuits constituted a single claim, concluding that the operative language was "gibberish, and thus the jury will have to decide what, if anything, the parties mutually agreed to."

Finally, the court held that the insured's waiver and estoppel defenses did not apply as a matter of law and that those issues would have to be tried by a jury.