

No Coverage For SEC Investigation Costs, Insurer Says

By **Alex Schuman**

Law360 (September 23, 2022, 6:30 PM EDT) -- Great American Insurance Co. urged a Nevada federal court to rule that it does not have to reimburse an appliance recycling business for defense costs incurred after a U.S. Securities and Exchange Commission investigation.

The insurer filed on Wednesday a **request for summary judgment**, claiming that JanOne, an appliance recycler and seller, cannot seek coverage because the SEC's actions occurred after its policy expired. Great American argued that the one event reported by JanOne during the policy period, a notice of deposition, does not count because the deposition never happened.

According to court filings, in May 2019 Great American received notice three days before the policy expired that Tim Matula, a director of JanOne and head of investor relations for a company called Live Ventures, learned that the SEC intended to issue a subpoena for him to testify as part of its investigation into alleged fraud and misrepresentations by Live Ventures, a Nevada-based holding company.

In August 2019, Great American said it advised JanOne that the insurer would review the transcript of Matula's deposition to see if any questions were asked in relation to his role with JanOne as opposed to his work with Live Ventures, which would not be covered.

In its summary judgment motion, Great American said that on Aug. 15, 2019, the SEC advised counsel that Matula's deposition would not go forward.

"Accordingly, while the subsequent actions taken by the SEC against others (not Matula) ostensibly arose out of the Live Ventures investigation, it cannot credibly be argued that these SEC actions arose from the notice of deposition of Matula — because the deposition never happened," Great American wrote, arguing that the legal actions taken by the SEC took place more than two years after the policy expired.

On Aug. 2, 2021, the SEC filed a lawsuit against Live Ventures and JanOne alleging multiple violations of the Securities Exchange Act, accusing staff of a fraudulent scheme that included inflating earnings.

"JanOne has admitted that no documents were produced in response to the SEC's subpoena to Matula, and that Matula's deposition was never taken," Great American wrote.

JanOne sought coverage from Great American in an August 2021 complaint, claiming the insurer's decision to cover JanOne for Matula's deposition should mean that a loss by JanOne, including its costs related to the investigation, would be covered under the policy.

Representatives for the parties did not immediately respond to requests for comment Friday.

JanOne Inc. is represented by Blake Roter and Christopher Kentra of Burke Warren MacKay & Serritella PC, and J. Stephen Peek and Jessica Whelan of Holland & Hart LLP.

Great American Insurance is represented by Amanda M. Stewart, David S. Blau and Ronald Laurence Nelson of Blau Keane Law Group PC.

The case is JanOne Inc. v. Great American Insurance Company et al., case number 2:21-cv-01554, in the U.S. District Court for the District of Nevada.

--Editing by Haylee Pearl.