

Single Lawsuit Constitutes Five Claims under Policy

March 2004

The Maryland Court of Appeals has held that, under a legal malpractice policy, a single lawsuit brought by five siblings alleging malpractice by the insured attorney in connection with a single personal injury lawsuit he brought on their behalf involved five separate claims under the policy. *Beale v. Am. Nat'l. Lawyers Ins. Reciprocal*, 2004 WL 306092 (Md. Feb. 19, 2004).

The insurer issued a lawyers professional liability policy, with a per claim limit of \$1 million and an aggregate limit of \$2 million. The policy stated that "[t]he Per claim Limit of Liability...is the limit of the Company's liability for all Damages arising out of the same, related or continuing Professional Services without regard to the number of claims made, demands, suits, proceedings, claimants, or Persons Insured involved."

Five siblings, who suffered bodily injury as a result of ingesting lead paint chips present in a rented house in Baltimore, MD retained the law firm to represent them in a personal injury action against their landlord. The attorney representing the siblings neglected the case, resulting in summary judgment in favor of the landlord based on lack of evidence. Thereafter, the siblings filed the underlying malpractice action against the attorney. The insurer maintained that the malpractice action constituted a single claim and offered the siblings the per claim limit of \$1 million. After the siblings rejected the offer, demanding the aggregate limit, the insurer filed the instant declaratory judgment action.

The Court of Appeals held in favor of the siblings, reasoning that the underlying litigation involved five claims under the policy because the attorney had a separate duty as to each sibling, even if he was representing them in the same case. The court explained that "the parties' intentions are more accurately determined by recognizing, and giving effect to, the duty that an attorney owes to each client individually and separate and apart from that owed his or her other clients." The court opined that a separate result could have been reached as to each individual child in the original litigation based on, for example, variations in their lead paint exposure and the resulting injury. The court therefore concluded that "because of the individual differences in the children and the distinct and separate duty that the attorney owes to each...the rendering of professional services on behalf of one of the children is not the same professional service as, or even related to, the professional services rendered on behalf of the other children."

For more information, please contact us at 202.719.7130.