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NEWSLETTER

Court Determines That Claim Made before Bankrupt Law Firm Dissolved

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The United States Court of Appeals for the Eighth Circuit, applying Missouri law, has determined that the term "dissolved," as used in a claims-made professional liability policy, was to be interpreted under Missouri partnership law, and based on this interpretation, the policyholder's claim was tendered to the insurer before the policyholder dissolved. *Old Republic Ins. Co. v. Bitting, et al., (In re Popkin & Stern)*, 2003 WL 21998978 (8th Cir. Aug. 25, 2003). The court further determined that a policy issued by a second insurer to the partners of the law firm after the dissolution of the law firm provided excess coverage only and that, as a result, the first insurer was fully liable for the claim.

The first insurer issued a claims-made policy to a law firm. The policy contained a change of status clause, which provided that, if the law firm dissolved, "this Policy shall end on the date the change in status takes place." The policy also contained an "other insurance" clause, which provided that "[t]his Policy applies in excess of any other valid and collectible insurance available to the Insured, unless such other insurance is written only as specific excess insurance over the limit of insurance of this Policy."

As a result of financial troubles, the law firm decided to dissolve. Seven days later, the law firm tendered a claim to the first insurer. The first insurer sought a declaratory judgment that no coverage was available because the claim was filed after the dissolution of the law firm.

The Eighth Circuit first determined that the term "dissolved" should be interpreted under Missouri partnership law, noting that the word "dissolved" is a legal term of art that applies to partnerships. The court therefore reasoned that applying Missouri partnership law to determine when the law firm dissolved "is consistent with the specific factual context of this case and the language of the insurance policy." The court then addressed whether the claim was filed prior to the policyholder's dissolution. The court observed that the policyholder had not followed the procedures for dissolution as outlined in the partnership agreement when it initially agreed to dissolve. Based on this conclusion, the court determined that the partnership actually dissolved approximately thirty days after it had initially decided to do so. Accordingly, the court concluded that the law firm's claim, which was made seven days after the policyholder's initial attempt to dissolve, but prior to the dissolution becoming effective under Missouri partnership law, was made during the policy period.

The Eight Circuit also considered the application of two "other insurance" clauses. After the law firm dissolved, the partners were insured under a policy issued by a second insurer. That policy contained an "other insurance" clause stating that "[i]f an Insured has insurance provided by other companies against a Claim covered by this policy, the Company shall not be liable under this policy for a greater proportion of such Damages and Defense Expenses than the applicable Limit of Liability stated...." The clause further provided that "with respect to acts or omissions which occur prior to the inception date of this policy, the insurance hereunder shall apply only as excess insurance over any other valid and collectible insurance...."

The court rejected the first insurer's argument that the "other insurance" clauses in the two policies were "mutually repugnant" and that both policies therefore afforded coverage. Instead, the court concluded that only the first insurer's policy provided coverage for the claim. The court reasoned that the second insurer's policy was "more specific" because of its reference to acts prior to the inception of the policy. The court therefore reasoned that, "[i]n the case of acts or omissions committed before the inception of the [second policy], however, the policy is more like a true excess or umbrella policy than a primary policy." Accordingly, it held that only the first policy provided coverage for the claim.

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