

Florida Court Holds “Per Claim” Limit Applies to Malpractice Claim

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A Florida intermediate appellate court has held that a legal malpractice policy's "per claim" limit applies to a claim for failure to join several necessary defendants in a medical malpractice action before the expiration of the statute of limitations. *Eagle Am. Ins. Co. v. Nichols, et al.*, No. 4D01-172, 2002 Fla. App. LEXIS 3035 (Fla. Ct. App. March 13, 2002).

This action arose out of an attorney's failure to add a hospital and several individual defendants to a medical malpractice action before the expiration of a statute of limitations. The attorney's legal malpractice insurer agreed to settle the claim for the policy's \$250,000 per claim limit; however, the attorney asserted that the \$500,000 aggregate limit applied to the claim. The attorney instituted a declaratory judgment action, claiming that the policy's aggregate limit applied to the claim because the failure to add each necessary defendant constituted independent acts of malpractice. The trial court agreed with the attorney, and the insurer appealed.

The intermediate appellate court reversed. The court observed that the policy provided that the "per claim" limit "is the maximum [the insurer] will pay for all claims and claims expenses arising out of or in connection with the same or related wrongful act." Based on this language, the court rejected the attorney's argument that each failure to add a necessary defendant constituted independent wrongful acts. To determine the number of legal malpractice claims, the court found that it must focus on the client's injury rather than the errors of the attorney. The court held that the attorney's conduct constituted one claim because the client suffered only one injury—the failure to collect the full amount of damages to which she was entitled. Moreover, the court noted that, even if the attorney had several legal malpractice claims, the "per claim" limit would still apply because the claims would have arisen out of "the same or related wrongful act."