wiley

NEWSLETTER

Multiple Claims Within Single Lawsuit Are Related Claims Subject to Single Per-Claim Policy Limit

August 2008

The United States District Court for the District of Nebraska has held that multiple counts within a single malpractice suit brought against a law firm and several of its attorneys constituted related claims subject to a single "per claim" limit of liability under the terms of a lawyers' professional liability policy issued to the firm. *Continental Cas. Co. v. Orr*, 2008 WL 2704236 (D. Neb. July 3, 2008).

In the underlying malpractice suit, several clients alleged that the firm's attorneys had misrepresented their special expertise in franchise law, corporate law and business litigation. The clients also alleged that the attorneys had negligently drafted franchising documents and then, rather than admitting the documents were defective, brought litigation against the clients' franchisees over the enforceability of the documents. The firm and its attorneys sought coverage for the malpractice suit under the policy, asserting that the malpractice suit contained multiple claims that each triggered the policy's per-claim limit of $2 million, resulting in maximum coverage up to the policy's aggregate damages limit of $4 million. In response, the insurer brought a declaratory judgment action to determine which limit applied.

In granting summary judgment to the insurer, the court first rejected the insurer's argument that "the term 'claim' is synonymous with 'complaint' and, because the [malpractice suit] is one lawsuit, it must be considered as one 'claim' even if it were to contain separate causes of action based on unrelated wrongful acts." The court noted that the state legislature had revised its rules of civil procedure to allow plaintiffs to bring as many independent claims as it had against an opposing party in one lawsuit. Thus, the court concluded, "the term 'claim' is not synonymous with 'complaint,' and a single lawsuit may contain multiple claims."

However, the court agreed with the insurer that all of the claims in the malpractice suit were "related claims" and therefore subject to the $2 million per-claim limit. The policy's related-claims provision stated: "If related claims are subsequently made against the Insured and reported to the Company, all such related claims whenever made, shall be considered a single claim first made and reported to the Company within the policy period in which the earliest of the related claims was first made and reported to the Company." The policy defined "related acts or omissions" as "all acts or omissions in the rendering of legal services that are

temporally, logically or causally connected by any common fact, circumstance, situation, transaction, event, advice or decision." The policy further defined "related claims" as "all claims arising out of a single act or omission or arising out of related acts or omissions in the rendering of legal services." The court agreed that the claims in the malpractice suit were all related because they arose after the clients "sought legal services from the Law Firm Defendants in order to develop an enterprise of coffee shop franchises." The court concluded that "[w]hile the Law Firm Defendants may have committed separate acts of alleged negligence, with one alleged mistake leading to another, all the allegations center on the Law Firm Defendants' acts or omissions related to the Clients' initiation of a coffee shop franchise venture."

The court also dismissed several counterarguments by the firm and its attorneys. The court rejected the argument that claims made after the end of the policy year, including claims added in amended complaints after the policy period expired, could not be related to the "first-made" claim. The court reasoned that this interpretation "invite[d] the Court to torture the language of the Policy to create an ambiguity," and the "proposed construction of the Policy also would permit claimants to circumvent the per-claim limit of the Policy with such ease as to render the per-claim limit meaningless." The court also rejected the argument that the term "related claims" referred "only to claims made or reported during the term of the Policy that relate back to claims made in prior years," holding that "[n]othing in the language suggests that 'related claims' cannot be made in the same policy year as the first-made claim, or even in immediate sequence with the first-made claim, as in the case of multiple claims in a single lawsuit."