

No Coverage for Claim Made after the Policy Period

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A California appellate court, in an unpublished opinion applying California law, held that an insurer that had issued a claims-made D&O liability policy had no duty to defend a claim that was made after the end of the policy period. *Ananda Church of Self-Realization v. Am. Int'l Surplus Line Ins. Co.*, No. C038514, 2003 WL 205126 (Cal. Ct. App., 3d Dist. Jan. 31, 2003).

The D & O insurer issued a claims-made policy to a religious organization. The policy provided coverage for loss "arising from any claim or claims which are first made against the insureds, jointly and severally, during the Policy period." Eight months after the policy expired, the religious organization and two of its directors were sued by a plaintiff alleging sexual discrimination and harassment, intentional infliction of emotional distress, fraud and battery. The organization promptly tendered the claim to its insurer, which denied coverage. Coverage litigation ensued.

The court held that the insurer had no duty to defend or indemnify the organization because the claim was made eight months after the policy expired. The court rejected the organization's contention that the print classifying the policy as "claims-made" was too small, noting that the print required no additional magnification to read the language describing the policy as claims-made. The court stated that there is "no authority holding that a court may rewrite an insuring clause of a policy more to the insured's liking simply because its font size is deemed insufficiently large." The court also rejected the organization's argument that the claims-made nature of the policy was contrary to its reasonable expectations, explaining that a policyholder's reasonable expectations are considered only in cases where the language of the policy is ambiguous. Finally, the court rejected the organization's argument that, because the underlying plaintiff initially complained about the work environment and sought an apology letter from one of the directors within the policy period, this constituted a claim made during the policy period. The court explained that a claim "[i]n the context of a D & O policy, [is]... 'the assertion of a liability of the party, demanding that the party perform some service or pay some money,'" not a request for an apology.

For more information, please contact one of WRF's Professional Liability Attorneys at 202.719.7130