

Louisiana Court Rules Limitation on Liability in Attorney's Claims-Made Policy Did Not Violate State Law

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A Louisiana appellate court has held that an attorney's claims-made professional liability policy did not afford coverage for a claim first made against the attorney more than four years after his liability policy had expired. *Marsh Eng'g, Inc. v. Parker*, 2007 WL 397131 (La. Ct. App. Feb. 7, 2007). The court also held that, under the circumstances, the policy's bar on coverage did not violate a Louisiana law prohibiting insurers from limiting rights of action against them to a period of less than one year from the time when a cause of action accrues.

The attorney was sued by a former client who alleged that the attorney fraudulently convinced him to transfer his ownership interest in a corporation to the attorney. The contract effecting the transfer was executed on February 3, 1986, but the former client did not become suspicious about the terms of the transaction until almost two years later. A confrontation with the attorney in late 1987 or early 1988 confirmed the client's suspicions, but the client waited three more years before he finally filed a lawsuit against the attorney seeking a rescission of the contract. Much later, the former client added the attorney's professional liability insurer as a defendant in the suit; however, the trial court quickly dismissed the insurer from the suit.

On appeal, the intermediate appellate court affirmed the trial court's dismissal of the insurer from the suit, ruling that the claims-made policy issued by the insurer to the attorney provided no coverage for claims first made four years after the policy had expired. The court rejected the former client's argument that the policy's limitation on coverage to claims first made during the policy period should not apply because of difficulties the client encountered in trying to track down and notify the proper insurer of the pending claim. The court reasoned that the issue of notice was irrelevant: the policy did not require *notice* within the policy period; rather, it required that the claim be *made* against the policyholder within the policy period. Because the former client's first formal demand on the attorney did not occur until November 1990, more than four years after the policy had expired, the policy did not provide coverage.

The court also held that the claims-made policy issued to the attorney did not violate a Louisiana law prohibiting insurers from limiting rights of action against them to a period of less than one year from the time when a cause of action accrues. The court commented that the former client failed to show that the attorney

or the insurer knew or had reason to know about the claim during either the policy period or the year following the accrual of his cause of action. Thus, under the facts of the case, the court found that the claims-made policy's limit on coverage did not impermissibly shorten the statutory period for actions against insurers to less than a year.