

Same Clients, Same Money and Same Damages: Same Legal Malpractice Claim

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Applying Oregon law, the Court of Appeals of Oregon held that two legal malpractice cases against two attorneys should be treated as one claim because they arose out of the work the attorneys performed to merge a limited liability company (LLC) into a corporation for the purpose of complying with securities laws. *Oregon State Bar Professional Liability Fund v. Benfit*, 2009 WL 188448 (Or. Ct. App. Jan 28, 2009).

In the underlying action, investors of an LLC-turned-corporation sued two attorneys who worked on forming the entity and assuring its compliance with securities laws. The organizers of the entity hired a corporate attorney to form the LLC and provide legal advice regarding the sale of interests in the LLC to investors. After the organizers sold a number of interests in the LLC, the organizers hired a securities attorney to address concerns the corporate attorney had about compliance with state and federal securities laws. Following the securities attorney's advice, the organizers merged the LLC into a corporation.

Some months after the merger, investors sued the organizers, the corporate attorney and the securities attorney. The investors claimed they were entitled to recovery from the corporate attorney because he assisted the organizers in improperly selling interests in the LLC and also recommended hiring the securities attorney. The investors claimed they were entitled to recovery from the securities attorney because the organizers allegedly violated securities laws by following the securities attorney's advice to merge the LLC into a corporation and exchange interests in the LLC for stock in the corporation.

The state bar's professional liability fund insured both attorneys. The policy limited coverage to \$300,000 for each claim. The policy provided that claims that were the "same or related" would be treated as one claim, regardless of the number of claimants, clients or covered parties. The policy defined "same or related" as "two or more CLAIMS that are based on or arise out of facts, practices, circumstances, situations, transactions, occurrences, COVERED ACTIVITIES, damages, liability, or the relationships of the people or entities involved (including clients, claimants, attorneys, and/or other advisors) that are logically or causally connected or linked or share a common bond or nexus."

The court held that the case against the corporate attorney and the case against the securities attorney constituted one claim for the purposes of the policy. The court reasoned that both cases involved the same

clients, aimed to retain the same investments made by the same investors and sought the same damages (i.e., the original investments). Additionally, the corporate attorney caused the organizers to hire the securities attorney. The court concluded the two claims were the "same or related" as defined in the policy and therefore constituted one claim, subject to a single \$300,000 limit.