

Related Wrongful Acts Provision Does Not Defeat an Insurer's Duty to Defend Where at Least One of the Related Acts Occurred Before the Retroactive Date

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The United States District Court for the Northern District of Illinois has held that a related wrongful acts provision does not excuse an insurer's duty to defend where some of the related wrongful acts occurred before the retroactive date in a claims-made-and-reported policy. *James River Ins. v. Rinella & Rinella, Ltd.*, 2008 WL 4211150 (N.D. Ill. Sept. 10, 2008).

In the underlying action, the insureds were alleged to have committed legal malpractice by, *inter alia*, failing properly to effectuate a stock option transfer and then concealing that failure from the plaintiff. Only the alleged cover-up occurred after the policy's retroactive date. The insurer denied coverage and sought a declaration that it had no duty to defend because all of the alleged wrongful acts were related wrongful acts that were deemed to have occurred before the policy's retroactive date.

The insurer issued a claims-made-and-reported legal malpractice policy that provided coverage for "a 'Claim' first made against the 'insured' and reported to us in writing during the 'Policy Period' by reason of a 'Wrongful Act' in the performance of or failure to perform 'Professional Services' by the 'Insured' The 'Wrongful Acts' must have been committed on or subsequent to the 'Retroactive Date' . . . and before the end of the 'Policy Period.'" The policy further provided that "[a]ll 'Claims' alleging, based upon, arising out of or attributable to the same 'Wrongful Act' and 'Related Wrongful Acts' shall be deemed to be a single 'Claim' . . . deemed first made on the date the earliest of such 'Claims' is first made even if such date is before the 'Policy Period.'"

The court began its analysis by observing that the policy's insuring agreement provided coverage for Claims made during the policy period based on wrongful acts. The court then emphasized that the insuring agreement did not mention related wrongful acts or otherwise limit the duty to defend. According to the court, this meant that because the underlying complaint alleged wrongful acts within the policy period, the duty to defend was triggered, regardless of whether the wrongful acts alleged during the policy period were related

to wrongful acts preceding the policy's retroactive date. The court then indicated that the policy's related wrongful act provision served only "to establish the policy's limits of liability" in connection with a claim.

The court also held that the policy's exclusion for claims reported under a prior policy was inapplicable in these circumstances. The insurer had argued that the provision was applicable since notice of the lawsuit was first given to another insurer. Noting that both policies were in effect at the time notice was given, the court held that the other policy did not constitute a "prior policy."