

Colorado District Court Narrowly Construes "Related Claims" Provision

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Applying Colorado law, a federal district court has held that claims against an attorney for professional negligence and for breach of fiduciary duty were not "related" under the insured's legal malpractice liability policy even though the claims involved the same clients and arose out of events surrounding the same transaction. *Professional Solutions Ins. Co. v. Mohrlang*, 2009 WL 321706 (D. Colo. Feb. 10, 2009).

The attorney had been retained to provide legal services in connection with the sale of a family business. Because of deficiencies in the documents prepared by the attorney, the sellers were unable to collect from the purchaser or revoke the sale when the purchaser ultimately failed to meet its payment obligations. In addition, after the closing of the transaction, the attorney, serving as counsel for one of the individual sellers and the business itself, drafted and caused that individual to sign papers that released a promissory note against the business. This was not the intent of the parties to the sale and, at the time that the papers were signed, the attorney incorrectly told the individual seller that he would continue to be entitled to payment on the note.

The sellers subsequently asserted claims against the attorney for professional malpractice in connection with structuring the sale of the business and breach of fiduciary duty in connection with the release of the note. The claims were tendered to the attorney's malpractice carrier and, in the coverage litigation that followed, the issue was whether the claims constituted "related claims" such that a single per-claim limit of liability applied. In this regard, the policy defined "related claims" as "claims arising out of a single act or omission or arising out of all acts or omissions in the rendering of professional services that are temporally, logically or causally connected by any common fact, circumstance, situation, transaction, event, advice or decision."

Addressing the issue on summary judgment, the court first concluded that the operative language in the policy was not ambiguous because the phrases "temporally connected," "logically connected" and "causally connected" are not susceptible to more than one reasonable interpretation. The court then found that the inclusion of only three types of qualifying "connections" precluded reliance on other broader bases. According to the court, "a merely perceivable or conceivable connection between two acts or omissions is insufficient" to establish that claims are "related claims" within the meaning of the policy.

Turning to the specific claims at issue, the court concluded that none of the requisite "connections" was

present. The court found that the breach of fiduciary duty claim was not "temporally connected" to the other claims because the events did not occur in a connected or continuous series of events. The release of the promissory note was signed three weeks after the sale of the business, and the sale did not contain a specific provision pertaining to the promissory note. Similarly, the court determined that the fiduciary duty claim was not "logically connected" to the other claims because, given the absence of a specific provision in the sale documents, the promissory note constituted a separate and independent obligation unaltered by the sale of the business. To find claims "causally connected," the court asserted that something more than "but-for" causation must exist. In turn, the court determined that the fiduciary duties claim was not "causally connected" to the other claims because no logical link existed between the sale and the release of the promissory note. According to the court, the attorney's decision to cause the individual seller to sign the release constituted "an independent, significant interruption to the causal chain between the sale and the [policyholder's] breaches of his fiduciary duties."