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NEWSLETTER

Tenth Circuit Strictly Enforces Claims-Made Requirement

December 2009

The United States Court of Appeals for the Tenth Circuit, applying Colorado law, has held that there is no coverage under a lawyers professional liability policy where a claim against a former firm attorney was made prior to the policy period. *Berry & Murphy, P.C. v. Carolina Cas. Ins. Co.*, 2009 WL 3765488 (10th Cir. Nov. 12, 2009).

The insurer issued a professional liability insurance policy to a law firm for the policy period February 6, 2008 to February 6, 2009. The policy provided specified coverage for claims first made against an insured and reported during the policy period. The policy defined "claim" as "a written demand for monetary or non-monetary relief including, but not limited to, a civil, criminal, administrative or arbitration proceeding . . ." and stated that a claim is deemed to have been made "at the time notice of the Claim is first received by any Insured." The policy further provided that all claims arising out of the same or related wrongful acts are deemed a single claim, made when the earliest claim arising out of such acts was first made. The policy broadly defined related wrongful acts as wrongful acts "which are logically or causally connected by reason of any common fact, circumstance, situation, transaction, casualty, event or decision."

In 2007, prior to the policy period, a former attorney of the insured law firm received a letter from the lawyer's former clients, advising the lawyer to put his malpractice carrier on notice that the clients intended to file a malpractice suit against him for his alleged inadequate handling of the clients' personal injury case. The lawyer provided notice of the letter to his current firm's carrier. He did not, however, provide notice to the insured firm or its insurer, notwithstanding the fact that the alleged acts took place while he was a shareholder at the insured firm. A year later, the lawyer's former clients filed a lawsuit against the lawyer and the insured firm alleging various acts of malpractice in connection with the lawyer's handling of the personal injury suit. The insured firm was served with a copy of the complaint in July 2008, and it put the insurer on notice of the claim at that time.

The insurer denied coverage for the claim because it was not made during the policy period. In the coverage litigation that followed, the insurer argued that the 2007 letter to the insured's former attorney and the subsequent malpractice suit arose out of the same or related wrongful acts and, therefore, were properly treated as a single claim made when the lawyer received the letter in 2007. The trial court agreed, and the Tenth Circuit affirmed.

The appellate court first concluded that the acts of malpractice alleged in the 2007 letter and the subsequent malpractice suit were related because the acts were logically or causally connected. The court noted that, even where there are multiple alleged acts of malpractice, where there is one injury flowing from such acts, "it seems logical to connect those multiple acts of malpractice as 'related.'" As such, the court concluded that the 2007 letter and the malpractice suit constituted a single claim first made when the lawyer received the letter in 2007. Therefore, the court concluded that the policy afforded no coverage for the claim because it was made prior to the policy period. Although acknowledging that this result could be viewed as harsh given that the insured firm was not previously aware of the claim, the court noted that the policy's unambiguous language required this result and the insurer was entitled to the benefit of the bargained-for terms of the contract.