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NEWSLETTER

Wrongful Acts Deemed Related under E&O Policy

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A Florida appellate court has ruled that two alleged acts of negligence were "related" for purposes of coverage under an E&O policy. *Paradigm Ins. Co. v. P&C Ins. Sys, Inc.*, No. 3D99-880, 2000 WL 3861 (Fla. App., 3d Dist. Jan. 5, 2000). The case originated with a personal injury judgment obtained against the owner of rental apartments. The insurance carrier for the owner of the apartments denied coverage for the claim. The injured party then sent a letter to the apartment owner's insurance agency advising that the agency was negligent in failing to procure insurance coverage for the type of claim at issue. The letter further requested that the insurance agency "turn this letter over to your E&O insurance carrier for handling."

The injured party eventually filed suit against the apartment owner's insurance agency alleging the same negligent act that was described in the original letter as well as a second negligent act. The second alleged negligent act, which was mentioned for the first time in the lawsuit, was the insurance agency's alleged failure to notify the apartment owner's excess insurance carrier of the personal injury lawsuit. The injured party's lawsuit against the insurance agency was filed after the expiration of the insurance agency's claims-made E&O policy.

The agency's E&O insurer argued, *inter alia*: (1) that the letter did not amount to a "claim," so there was no "claim" made during the policy period; and (2) that the alleged claim that remained at issue at the time of the coverage litigation (the alleged failure to notify the insured's excess carriers) was not made until after the claims-made policy expired.

The court rejected all of the E&O insurer's arguments. First, the court agreed with the policyholder that the letter, which asserted negligence, a loss, and requested that the letter be turned over to the agency's E&O insurance carrier, was a "demand for money within the meaning of the insurance policy" and thus fell within the definition of "claim."

Second, the court rejected the E&O insurer's argument that the alleged failure to notify the apartment building's excess insurance carrier of the underlying personal injury lawsuit was a wholly independent act of negligence and did not relate back to the original claim of negligence for failure to procure insurance coverage for the apartment building. Instead, the appellate court found that both alleged acts of negligence were causes or contributed to the absence of insurance coverage for the underlying loss. Thus, the appellate

court affirmed the trial court's conclusion that the failure to notify the excess insurance carrier was a "related" act for purposes of the E&O policy and was part of the original claim made during the policy period.

Although the court ruled against the insurer in this case, its holding could prove useful in cases in which insurers wish to demonstrate that new allegations or lawsuits relate back to claims first made during a prior policy period. Here, the claimant asserted a new reason for liability in the later filed lawsuit, and the court nevertheless concluded that the new allegation related back to an earlier assertion of negligence.