wiley

NEWSLETTER

Emails Demanding to Be “Made Whole” Constitute “Claims”

May 2014

Applying California law, a California federal district court has held that emails to a wealth manager from his clients constituted “claims” within the meaning of a claims-made management liability policy because the emails insisted that the insured take curative action. *Presidio Wealth Mgt., LLC v. Columbia Cas. Co.*, 2014 WL 1341696 (N.D. Cal. Apr. 3, 2014). The court also held that, because the emails and a later-filed arbitration and lawsuit against the insured involved “interrelated wrongful acts,” the later proceedings related back and were deemed to have been first made at the time of the emails, prior to the inception of the policy.

In 2007, a couple hired the insured wealth management firm and deposited $10 million into the firm's custodial account. The firm allegedly used the clients' funds to purchase illiquid securities. Between September 2009 and January 2010, the husband sent a series of emails requesting that the firm solve the illiquidity situation so as to “make whole” the clients. Around the same time, the husband orally advised the firm's executive chairman that “I'm not trying to sue you.” In February 2010, the couple moved their investments to a separate entity, seemingly resolving the situation. Then, in October 2010 and November 2010, the clients filed an arbitration claim and a civil action against the firm. The firm's insurer denied coverage for both matters under a claims-made investment management policy that incepted on July 1, 2010, concluding that the prior emails constituted “claims” to which the civil suit and arbitration related back, meaning that the policy's insuring agreement was not implicated.

In the coverage litigation that followed, the court agreed with the insurer's position. First, the court held that the emails constituted “claims,” a term that the policy defined to include a “written demand for monetary damages or non-monetary relief.” The court reasoned that each email insisted that the firm take some course of action—namely, to cure the illiquidity problem. Thus, each email constituted a “demand” that the firm provide “non-monetary relief” to the clients in the form of liquidity. The court rejected the firm's argument that the emails were not “claims” because they did not put the firm on notice of the clients' intent to file a lawsuit, noting that the definition of “claim” did not require such notice. The court also rejected the argument that it was reasonable for the firm to infer that the clients were not actually demanding action based on the “nuance in tone” of the husband's communications. The court observed that the “reasonable expectations” doctrine cannot be used to avoid unambiguous provisions in a policy.

Next, the court held that the emails, the arbitration, and the civil lawsuit against the firm each involved “interrelated wrongful acts,” a term defined to mean any wrongful acts “which are logically or causally connected by reason of any common fact, circumstance situation, transaction or event.” The court rejected the insured's argument that the civil action and the arbitration could not relate back to the emails because the husband had, subsequent to the emails, made clear that “he was not seeking to pursue a legal claim.” The court reasoned that the husband's communications with the firm after sending the emails could not possibly “break the interrelatedness of otherwise interrelated claims.”