

## Attorney's Drafting of Will Is Covered "Act" under Professional Liability Policy

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The Court of Appeals of Maryland has held that a professional liability insurer is required to indemnify an attorney for settlement costs and counsel fees associated with negotiating a settlement with beneficiaries of an invalid will, but is not required to indemnify the attorney for costs and fees associated with an action brought by the attorney to determine the validity of the will. *Pacific Employers Ins. Co. v. Eig*, 2004 WL 2998753 (Md. Ct. App. Dec. 29, 2004).

The insurer issued a claims-made professional liability policy to an attorney. The policy contained a "Discovery Period Endorsement," which extended coverage to acts occurring during the policy period but reported after termination. During the policy period, the attorney drafted a will that contained a residual clause, which was later deemed invalid. The will was executed after the policy period terminated. Coverage litigation ensued with respect to the insurer's duty to defend and indemnify the attorney for costs and fees associated with: (1) a declaratory judgment filed by the attorney and (2) the attorney's settlement with the beneficiaries affected by the invalidation of the residual clause.

The court reached the following conclusions: (1) the professional "act" or "omission" of the attorney occurred during the policy period, when the attorney drafted the will, and not when the will was executed, (2) the insurer owed no duty to defend the attorney for his declaratory judgment action because it was "not a suit or claim that triggered [the insurer's] duty to defend" under the terms of the policy since it could not have resulted in an award of damages against the attorney, (3) notification by the affected beneficiaries that they were going to "hold [the attorney] responsible for their losses" constituted a "claim" within the meaning of the policy that required the insurer to indemnify him for costs and counsel fees associated with negotiating a settlement, (4) even if the attorney had failed promptly to notify the insurer of the claim, the insurer had suffered no prejudice as a result and (5) the attorney could recover his attorney's fees for his breach of contract action against the insurer.

For more information, please contact us at 202.719.7130.