

No Coverage for Complaint Filed Prior to Inception of Policy

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In an unreported decision, the United States District Court for the Eastern District of Washington, applying Washington law, has held that a professional liability insurer properly denied coverage for a complaint served on an insured prior to the inception of the claims-made policy. *RC Investments, Inc. v. St. Paul Fire & Marine Ins. Co.*, 2005 WL 1123751 (E.D. Wash. May 11, 2005).

The insurer issued a claims-made professional liability policy to the insured real estate company providing coverage for "a claim or suit first made or brought while this agreement is in effect." The policy contained a known wrongful acts exclusion stating that "[w]e won't cover loss that results from any wrongful act any protected person knew about before the beginning date of this agreement and could reasonably foresee would result in a claim or suit." The policy was first issued for the period March 16, 2000, to March 16, 2001, and was renewed for an additional one-year period.

On February 17, 2000, the company was served with a complaint for damages arising out of certain real estate transactions and loans by an independent contractor of a franchise formed through the company. The company notified the insurer of the complaint in May 2001. The insurer denied coverage in June 2001 because the complaint was filed prior to inception of the first policy. In July 2001, an amended complaint was filed adding counts against the company's owner individually. The company notified the insurer of the amended complaint in July 2002. The insurer again denied coverage because the claim was first made prior to the first policy period. The instant coverage action ensued.

The court granted summary judgment for the insurer, ruling that the company was not entitled to coverage for the original complaint because it was filed prior to inception of the first claims-made policy. The court rejected the owner's argument that the claims-made provision was inapplicable to him because he asserted that he had no personal knowledge of the transactions giving rise to the complaint. The court determined that because a claim was made against the owner prior to policy inception and the owner knew about that claim, the claims-made provisions applied. The owner's knowledge or culpability in the underlying matter was irrelevant to a determination of coverage obligations.

The court likewise held that the known wrongful acts exclusion applied because service of the complaint placed the owner on notice of the alleged wrongful acts prior to policy inception. The court rejected the owner's argument that the exclusion was void because he disclosed the complaint to his insurance agent prior to issuance of the policy. The court found no support in the policy language for avoiding the exclusion by disclosing known wrongful acts prior to the inception of the policy.

The court also rejected the company's argument that coverage should be available by estoppel because the insurer breached its duty to defend. Relying on *Holly Mountain Resources v. Westport Insurance Corp.*, 104 P.3d 725 (Wash. 2005), the court held that coverage by estoppel is only available where the insured establishes that the insurer acted in bad faith. There was no evidence in the instant action, and the company did not plead, that the insurer committed bad faith.

Finally, the court concluded that, although the amended complaint added new parties and a new cause of action, it related back to the date of the original complaint because it was based on the same facts alleged in the original complaint. The policy provided that "[w]e'll also consider all claims or suits for covered loss caused by a wrongful act, or a series of related wrongful acts, to have been made or brought on the date that the first of those claims or suits is first made or brought." The court determined that as a "related wrongful act," the additional claim would be deemed filed on the date of the original complaint, *i.e.*, prior to inception of the first policy. The court noted that, even if the amended complaint were treated as a new claim, the known wrongful acts exclusion would still apply because the original complaint placed the owner on notice of the alleged wrongful acts forming the basis of the amended complaint.

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