

Claims-Made Policy Requiring That Wrongful Acts Occur During Policy Period Comports with Louisiana Public Policy

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A Louisiana intermediate appellate court, applying Louisiana law, has held that a claims-made E&O policy limiting coverage to claims arising from wrongful acts occurring within the policy period does not violate public policy. *Guidry v. Lee Consulting Eng'g Inc.*, 2006 WL 3093819 (La. Ct. App. Oct. 31, 2006).

The insurer issued a claims-made E&O policy to an engineering firm, effective from February 1, 2002 through February 1, 2003. The policy had a retroactive date of February 1, 2002 and stated that "[c]laims first made arising from any Wrongful Act prior to this date are not covered by this Evidence of Insurance." Section I, Part B of the policy provided that, for coverage to attach, a wrongful act "[must be] committed during the Coverage Period and the Claim [must be] first made against the Insured and reported to the Underwriters... during the Coverage Period or within 60 days after the end of the Coverage Period." An endorsement to Section I, Part A of the policy dealing with reimbursement of defense expenses provided that "[s]ubject to the terms of the Policy, Underwriters agree to pay on behalf of the Insured all sums... which the Insured shall become legally obligated to pay... as a result of CLAIMS FIRST MADE AGAINST THE INSURED DURING THE COVERAGE PERIOD."

The underlying suit stemmed from the firm's involvement in the design and construction of a home. In 2001, following completion of the home, the owner found cracks in the drywall that were caused by settlement. The homeowner filed suit against the firm and its insurer, alleging negligence on the part of the firm in the design of the foundation. In its answer, the insurer denied the allegations and also asserted that coverage was not available because the policy was not in effect at the time of the firm's alleged errors and omissions. After the trial court granted the insurer's motion for summary judgment, this appeal followed.

The insured first asserted that it had been told that it was buying a claims-made policy "that would cover all professional liability claims asserted during the coverage period," regardless of when the wrongful act occurred. The court rejected the assertion, emphasizing that Section I, Part B of the policy expressly provided that, for coverage to be available, a wrongful act must be "committed during the Coverage Period."

The firm next argued that the policy's endorsement changed the coverage language in Section I, Part B and thus coverage was available. The court disagreed, noting that the endorsement indicated that it amended Section I, Part A relating to defense expenses, rather than Section I, Part B, which was the applicable section of the policy. The court explained that "the endorsement only made changes with regard to the provisions regarding reimbursement for costs of defense contained in Part A of the policy."

Finally, the firm argued that the terms of the policy were contrary to public policy, as the insurer described the policy as a claims-made policy without regard to a retroactive date. The firm argued that, given the nature of engineering work, there could never be coverage under the terms of the policy as interpreted by the insurer. The appellate court disagreed, holding that the firm was not misled regarding the terms of the policy and there was no violation of public policy. Relying on *Livingston Parish School Board v. Fireman's Fund American Insurance Co.*, 282 So.2d 478 (La. 1973), the court explained that "[w]here a policy unambiguously and clearly limits coverage to acts discovered and reported during the policy term, such limitation of liability is not *per se* impermissible." Further observing that the policy's declaration page clearly provided that the retroactive date was the same date as the first day of the coverage period, the court also rejected the firm's argument that it was never informed of the retroactive date.