

**ALERT**

# Complaint and Amended Complaint in Same Litigation Are a Single Claim

May 14, 2012

Applying Pennsylvania law, the Superior Court of Pennsylvania has held that a complaint asserting certain causes of action and an amended complaint in the same litigation asserting different causes of action constitute a single claim because they were both filed in one civil proceeding. *Superior Beverage Grp., Ltd. v. Cincinnati Ins. Co.*, 2012 Pa. Super. LEXIS 527 (Pa. Super. Ct. Apr. 13, 2012).

A company obtained a claims-made employment practices liability policy for the policy period January 28, 2005 to January 28, 2008. The policy originally had a limit of liability of \$500,000 per claim, but, in 2007, the limit was increased to \$1 million per claim. On March 13, 2006, several employees filed an age discrimination lawsuit against the company. On October 18, 2007, the employees filed an amended complaint that asserted causes of action for race discrimination. The company's insurer undertook the company's defense throughout the litigation. After the action concluded with the entry of a judgment against the company, the company argued that the policy provided \$1.5 million in coverage for the action because the age discrimination complaint was a claim subject to a \$500,000 limit and the race discrimination amended complaint was a separate claim subject to a \$1 million limit. The insurer disagreed, and so the company filed a declaratory judgment action on the issue of how much coverage was available under the policy.

On cross motions for summary judgment, the trial court ruled for the insurer. The appeals court affirmed, finding that the complaint and the amended complaint were a single claim subject to a single \$500,000 limit of liability. The policy defined "claim" as a "civil . . . proceeding commenced by the service of a complaint," and provided that a "claim" maintained by multiple plaintiffs shall be subject to a

## Practice Areas

D&O and Financial Institution Liability  
E&O for Lawyers, Accountants and Other Professionals  
Insurance  
Professional Liability Defense

single limit of liability. Here, the court concluded, the amended complaint did not constitute a new claim because it was not a new civil proceeding. Instead, it was part of the same civil proceeding as the original complaint, and thus the two constituted a single claim subject to a single limit of liability.

The company argued that the insurer was estopped from denying that the claim was subject to \$1.5 million in coverage because the insurer had continued to defend the litigation after the claimants had filed the amended complaint. The court rejected this argument, finding that, in continuing to defend, the insurer acknowledged only that the action was a covered claim, not that it was two claims subject to two limits of liability. Indeed, the court held, because both complaints were a single claim, the insurer was obligated to continue to provide a defense throughout the litigation.

The company also argued that the definition of “claim” must be interpreted in connection with the policy’s allocation provision, which provided for allocating between covered and uncovered loss in a single proceeding. The company argued that this provision contemplated that one proceeding could constitute multiple “claims.” The court disagreed, holding that the allocation provision merely acknowledged that a single proceeding could have covered and uncovered causes of action, but that the proceeding was still only one claim.