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ALERT

Allegations Concerning Alleged Malpractice Are "Related Claims" to Prior Claim Involving Same Insured, Claimant and Time Period

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The United States District Court for the Southern District of Georgia, applying Georgia law, has granted an insurer's supplemental motion for summary judgment, finding that a claimant's allegations of legal malpractice in connection with an underlying lawsuit and a new business venture were "related claims" to the claim first made against the insured prior to the inception of the lawyers professional liability policy at issue. *Simpson & Creasy, P.C. v. Continental Cas. Co.*, No. 409-202 (S.D. Ga. Oct. 31, 2012). Wiley Rein represented the insurer.

The insured lawyer notified its professional liability insurer of a claim after being named in a legal malpractice lawsuit filed by a former client. The insurer denied coverage under the claims-made-and-reported policy on the basis that the claim was first made prior to the inception of the policy, and the insured filed a coverage action.

In a prior ruling, the district court granted the insurer's motion for summary judgment, finding that a letter from the claimant terminating the representation, a letter from the claimant's new counsel requesting that the insured add the claimant's name to an account in dispute, the execution of a tolling agreement and the claimant's demand that the insured notify its professional liability insurer reflected that a was claim first made prior to the policy period. The United States Court of Appeals for the Eleventh Circuit affirmed the judgment, but also remanded the case to the district court to determine if two matters raised in the claimant's underlying lawsuit against the insured but not addressed in the pre-policy exchanges were "related" to the pre-policy claim.

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The policy defined "related claims" as "all claims arising out of a single act or omission or arising out of related acts or omissions in the rendering of legal services." The policy further provided that related acts or omissions are "all acts or omissions in the rendering of legal services that are temporally, logically or causally connected by any common fact, circumstance, situation, transaction, event, advice or decision." The policy also stated that "[i]f 'related claims' are subsequently made against the Insured, . . . all such 'related claims' . . . shall be considered a single 'claim' first made and reported . . . within the policy period in which the earliest of 'related claims' was first made and reported."

On remand, the district court granted the insurer's supplemental motion for summary judgment, stating that it "is not persuaded by [the insured's] argument that there are multiple breaches of the standard of care, thereby making them unrelated [claims] because each claim requires different proof and causation." Relying on *Continental Casualty Co. v. Wendt*, 205 F.3d 1258 (11th Cir. 2000), the court held that claims are related where they are "tied together based on a single course of conduct." Here, the court found, the single course of conduct involving the lawsuit and business venture at issue "were directly connected to the underlying [] claim, which involved [the insured's] involvement in a series of business and transactional matters for [the claimant] over the course of several years." Finding that the termination of the lawsuit and the business venture were "related claims" to the prior claim concerning the termination of the insured's representation of the claimant, the court found that it was "immaterial that the [lawsuit and business venture] claims were first made" in the underlying complaint against the insured during the policy period because the policy provided that related claims are deemed made at the time of the earliest claim, which here was prior to the policy's inception.

The court also held that the tolling agreement, which was executed prior to the policy period, broadly covered the time period of the insured's representation of the claimant in the lawsuit and business venture, which provided an independent basis for granting summary judgment. Finally, the court held that the insured's statutory duty under Georgia law to disclose to the claimant the name of the insurer upon request also provided a basis upon which to grant the insurer's motion for summary judgment because the "statutory request" implies that claim has been made and "such a claim covers those acts during [the insured's] representation of [the claimant] – including the facts surrounding the [] lawsuit and business venture."

The opinion is available here.