

ALERT

Continuity Dates and Discovery Period Do Not Expand Coverage for Claim Made Before the Policy Period

April 7, 2014

The United States District Court for the Eastern District of Louisiana has held that neither continuity dates nor the discovery period of a claims-made policy altered the conclusion that a lawsuit was not covered because the claim was first made prior to the policy period. *XL Specialty Ins. Co. v. Bollinger Shipyards, Inc.*, 2014 WL 994665 (E.D. La. Mar. 13, 2014).

In a prior summary judgment ruling, the court had held that a lawsuit against the insured was not covered under a claims made policy because the “claim” was first made three years earlier, when the insured entered into a tolling agreement with the claimant. The insured moved for reconsideration on the basis that the court failed to consider the “continuity dates” of the policy. The insured argued that the claim should be covered because it was made “between the Continuity Dates and the end of the D&O Policy.” The court rejected this argument, noting that the policy, by its plain terms, limits coverage to claims first made during the policy period. The purpose of the continuity dates, reasoned the court, is to delimit the scope of the policy’s prior and pending litigation exclusion, not to change the policy period or the policy’s requirement that a claim must be first made during the policy period in order for the policy to afford coverage.

The court also determined that the policy’s discovery period was irrelevant to the coverage case. First, the court noted that the period was never triggered because the insured renewed its policy year after year. Second, in any event, the discovery period operates to extend coverage after the applicable policy period, and has no

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application where a claim was made before the policy period.