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NEWSLETTER

Legal Malpractice Actions Are Not Related; Aggregate and Not Per Claim Limit Applies

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A federal court in Ohio recently ruled that three legal malpractice claims arising from an attorney's negligence in creating a corporation were not sufficiently related to constitute one claim under a professional liability policy. *Scott v. Am. Nat'l Fire Ins. Co.*, No. 5:02-CV-0516, 2002 U.S. Dist. LEXIS 15688 (N.D. Ohio Aug. 19, 2002). Accordingly, the court determined that the policy's aggregate limit of liability and not its per claim limit of liability applied to the malpractice claims.

The insured attorney represented a golf equipment corporation and two investors in connection with the creation of the corporation. After the corporation failed, allegedly as a result of the insured's negligence, the investors and the corporation brought legal malpractice actions against the insured. The investors maintained that the insured failed properly and timely to incorporate the corporation, causing the investors to incur personal liability. The corporation claimed that the insured failed to transfer intellectual property rights in certain golf equipment and ensure that the United States Golf Association approved the golf equipment prior to the creation of the corporation. In the ensuing coverage litigation, the parties disputed whether the policy's limit of $200,000 per claim applied or whether the allegations gave rise to multiple claims, thus implicating the policy's $600,000 aggregate limit.

The court held that the aggregate limit of liability applied to the malpractice action because the actions did not constitute one claim under the policy. The relevant provision of the policy provided that "Claims alleging, based upon, arising out of or attributable to the same or related acts, errors, or omissions shall be treated as a single claim..." The court determined that the three actions were unrelated because the insured owed separate duties to the corporation and the two investors. Moreover, the court found that the corporation and investors each had "separate rights" that should have been protected by the insured. Lastly, the court reasoned that the insured's conduct resulted in "different and discrete harms" to the corporation and the investors.