

# Court Upholds Application of Retroactive Date In Claims-Made Policy

---

November 2003

A federal district court in Louisiana, applying Louisiana law, has held that a claims-made professional liability policy did not afford coverage for a claim made during the policy period where the claim arose out of conduct occurring prior to the retroactive date and the policy excluded coverage for such conduct. *Malmay v. Sherman*, 2003 WL 22077786 (E.D. La. Sept. 8, 2003).

The insurer issued a professional liability policy to a lawyer. The policy was a claims-made policy with a policy period of October 17, 2001 to October 17, 2002. The policy contained a Retroactive Date of October 17, 2001, and it stated that coverage was available for "Claims first made against any Insured during the Policy Period and reported to the Company in writing during the Policy Period or within 60 days thereafter, by reason of any Wrongful Act occurring on or after the Retroactive Date." It further stated that "Claims arising from any Wrongful Act...occurring prior to [the Retroactive Date] are not covered by this Policy."

On May 16, 2002, the lawyer informed the insurer of a malpractice claim against him. The claim arose from the lawyer's failure to file his client's personal injury claim by January 2, 2001, the last day within the applicable statute of limitations. The insurer denied coverage because the wrongful act giving rise to the claim occurred on January 2, 2001, when the lawyer allowed the statute of limitations to run, which was prior to the Retroactive Date of the policy.

In the coverage litigation, the lawyer argued that because the policy was labeled on the declarations page as a "claims-made" policy, it necessarily provided coverage for all claims made during the policy period, regardless of the date of the acts giving rise to the claim. The district court rejected that argument, and held for the insurer. The court reasoned that the notice on the declarations page that the coverage was claims-made simply imposed one limitation on coverage. "That such claims are excluded from coverage by virtue of the Policy being a 'claims-made' policy does not necessarily mean that all claims made within the policy period are *included* within the scope of coverage." The court therefore concluded that the retroactive date in the policy "operates as an independent and additional limitation on coverage."

For more information, please contact us at 202.719.7130.