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NEWSLETTER

# Subsequent Related Claim Subject To Limit of Liability in Place When Claim First Made

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The Court of Appeals of Kentucky has held that an insured attorney's inquiry about coverage for a sanctions award constituted a claim first made before the insurer increased the limit of liability on a subsequently issued policy. *Baldwin v. Lawyers Mut. Ins. Co. of Kentucky*, 2011 WL 1598743 (Ky. Ct. App. Apr. 29, 2011).

In December 2006, the insured attorney contacted her professional liability insurer to inquire about the possibility of coverage for sanctions incurred in connection with the failure to identify an expert in ongoing litigation and to advise that her client might file a malpractice action against her. At that time, the insured had a professional liability policy with a $250,000 limit of liability. The policy also contained a Multiple Claims provision providing that "two or more claims arising out of a single act, error or omission . . . shall be treated as a single claim [and] shall be considered first made at the time the earliest Claim . . . or related acts . . . were first made."

After the appeals court denied the attorney's petition for review of the sanctions, the attorney again notified the carrier of the possibility that her client might file a malpractice claim against her. The policyholder also requested an increase in her policy limit to $1 million per claim. The insurer issued an endorsement a week later reflecting the policy limit increase for claims made on or after July 25, 2007.

The client subsequently filed a malpractice action, and the carrier undertook the attorney's defense, subject to a $250,000 coverage limit, while the insured contended that the $1 million limit applied. In response, the insurer filed a declaratory judgment action to determine the applicable limit of liability available to fund any judgment against the attorney, and the underlying claimant intervened. On cross motions for summary judgment, the lower court ruled in favor of the insurer, finding that the policyholder understood what constituted a claim and tendered notice of a claim or potential claim in 2006 before the increased policy limit took effect. The claimant appealed.

The appellate court affirmed, finding no error in the lower court's determination that the attorney's inquiries with the carrier about potential coverage for the costs award was a claim that occurred when the policy's limit of liability was $250,000, and that the subsequent malpractice action was a related claim subject to the same limit of liability. According to the court, the attorney made a claim for benefits prior to seeking and receiving a increase in the limit of liability and thus all subsequent claims arising out of the same occurrence were

subject to the limit of liability in place when the claim was first made.