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NEWSLETTER

Endorsement Raising Aggregate Limit for Acts Occurring after Date of Endorsement Does Not Convert Policy to Occurrence-Based Policy

August 2004

The United States District Court for the Eastern District of New York, applying New York law, has held that an endorsement to a claims-made E&O policy raising the aggregate limit of the policy for a wrongful act, or series of continued, repeated or interrelated wrongful acts first occurring on or after the date of the endorsement did not impermissibly alter the policy from a claims-made to an occurrence-based policy. *Am. Int'l. Specialty Lines Ins. Co. v. Nat'l Ass'n of Bus. Owners & Professionals*, 2004 WL 1551585 (E.D.N.Y. June 29, 2004).

The claims-made policy at issue incepted on March 6, 1998 and was effective through March 6, 1999. On July 10, 1998, Endorsement No. 4 was added to the policy. This endorsement stated that the aggregate limit of the policy would be increased from $1 million to $3 million for "a Wrongful Act which first occurs; or, a series of continuous, repeated or interrelated Wrongful Acts where the first Wrongful Act occurs; on or after July 10, 1998, and before the end of the policy period." The endorsement also provided that the $1 million limit would continue to apply "for any claim for: a Wrongful Act which first occurs; or, a series of continuous repeated or interrelated Wrongful Acts where the first Wrongful Act occurred; before July 10, 1998 and before the end of the policy period."

The coverage dispute arose out of a number of lawsuits filed against the insured association, alleging that the association failed to pay medical benefit claims. The litigation settled with an independent receiver for $1 million, driven in part by the conclusion about the applicable policy limit. In order to evaluate the fairness of the settlement, the court requested a briefing concerning the aggregate limit of the policy.

Both the insurer and the parties challenging the settlement agreed that the $1 million limit applied to claims made prior to July 10, 1998. However, the parties disputed which aggregate limit applied to claims asserted on or after July 10, 1998. The parties challenging the settlement argued that Endorsement No. 4 improperly changed the policy from a claims-made to an occurrence-based policy. The court rejected this argument. It first noted there are many types of claims-made policies, including a "hybrid," whereby not only must the claim be made during the policy, "but also that the claim arise out of the wrongful acts that take place after the inception of the policy, and during the policy period."

The court concluded that Endorsement No. 4 "merely changed the amount of coverage for claims asserted during the policy period alleging a Wrongful Act which first occurs or a series of continuous, repeated or interrelated Wrongful Acts where the first Wrongful Act occurs on or after July 10, 1998 and before March 6, 1999." The court opined that this was a permissible modification of the policy to a hybrid, claims-made policy. It also found that incorrect use of punctuation in the endorsement—misplaced semicolons—did not render the endorsement ambiguous as it is not "reasonably susceptible to more than one reading."

The court also held that a $3 million aggregate limit applied only to claims asserted between July 10, 1998 and March 6, 1999, inclusive, alleging Wrongful Acts occurring on or after July 10, 1998, or a "'continuous, repeated or interrelated Wrongful Acts' when the first Wrongful Act occurred on or after July 10, 1998 and before then end of the policy period." Although "'continuous, repeated or interrelated'" were not defined in the policy, the court explained that legally similar claims asserted by the same person satisfied this definition within the meaning of the policy; however, the court held that legally similar claims asserted by different individuals alleging wrongful denial of medical benefits beginning after July 10, 1998 would be subject to the higher aggregate limit in the endorsement.

In light of its prior reasoning, the court stated, "[I]t appears that a large percentage of these claims" are subject to the $1 million limit. It therefore approved the $1 million settlement as reasonable.

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