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Illinois Court Holds Ten Separate Lawsuits Are Sufficiently Related To Constitute One "Claim"

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In *Lloyd's Syndicate 3624 v. Biological Res. Ctr. Of Ill.*, LLC, 2018 U.S. Dist. LEXIS 160263 (Sept. 19, 2018), the U.S. District Court for the Northern District of Illinois held that Hiscox's $2 million single "Claim" limit applies to ten underlying lawsuits that involved a similar pattern of alleged wrongdoing.

Hiscox issued a professional and general liability policy ("Policy") to Biological Resource Center of Illinois, LLC ("BRCI"), which Policy provided coverage on a claims-made basis. The Policy provided limits of $2 million for each "Claim" and $3 million in aggregate. The Policy defined a "Claim" as "any notice received by the Insured of a demand for Damages or for non-monetary relief based on any actual or alleged Wrongful Act." The Policy further stated that "All Claims based upon or arising out of any and all continuous, repeated or related Wrongful Acts or Accidents committed or allegedly committed by one or more of the Insureds shall be considered a single Claim. . . ."

BRCI was named as a defendant in ten underlying lawsuits arising out of the alleged mishandling and/or sale of human remains. The complaints alleged that BRCI induced plaintiffs or their decedents to donate human remains for medical or scientific purposes, but then BRCI improperly sold, mishandled and/or desecrated the remains.

BRCI tendered the suits to Hiscox and Hiscox funded BRCI's defense costs in the underlying lawsuits under a reservation of rights. Both parties agree that Hiscox paid more than $2 million in "Claim Expenses" in defending the claim, as that term was defined to include attorneys' fees.

Hiscox filed a declaratory judgment action requesting an adjudication that it owe no further duty to defend or indemnify because the underlying lawsuits constitute a single "Claim," and the "Claim Expenses" exceeded the $2 million per "Claim" limit of liability. BRCI argued that the underlying lawsuits qualified as separate, unrelated "Claims" and therefore Hiscox should continue defending the underlying lawsuits until the $3 million aggregate limit is reached.

In determining the number of "Claims" asserted against BRCI, the court focused its analysis on the term "related" in the context of phrase, "continuous, repeated, or related Wrongful Acts." The court defined the term "related" broadly. The court cited Gregory v. Home Ins. Co., 876 F.2d 602 (7th Cir. 1989), where the Seventh Circuit found the term "related" to incorporate both logical and causal connections. The court cited to similar definitions of "related" by the Illinois Appellate Court in *Cont'l Cas. Co. v. Howard Hoffman & Assocs.*, 955 N.E.2d 151, 162-63 (Ill. App. Ct. 2011).

The court then held that the underlying lawsuits constitute a single “Claim” under the Policy. The underlying complaints all alleged that (1) BRCI promised to use the human remains for medical and/or scientific purposes; (2) BRCI falsely represented and breached its duty by mishandling and/or selling the human remains; and (3) this conduct was discovered following an FBI raid. Because the underlying cases are all based upon the same conduct, the court found the cases plainly related under the Policy. Further, it did not matter that the underlying lawsuits contained varying causes of action, or identified different body parts sold by BRCI at different periods of time.

Instead, as the claims pertained to the same specific course of wrongdoing – BRCI’s unauthorized mishandling and/or sale of body parts – the suits were sufficiently related and constitute one “Claim.” The court granted judgment on the pleadings to Hiscox.