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# Ninth Circuit Finds Policy's Definition of "Policy Period" Fatal to Insurer's "Related Claims" Argument

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Professional liability policies often include some form of a "related claims" or "related acts" provision stating that if more than one claim results from a single wrongful act, or a series of related wrongful acts, such claims will be treated as a single claim and deemed first made during the policy period in which the earliest claim was made. These provisions can have significant implications on the applicable policy and policy limits, retroactive date issues, and whether such claims were first made and reported during a particular policy period. Recently, the Ninth Circuit issued a stern reminder of how the particular policy language can effect, and in this case thwart, the intended scope of the carrier's "related claims" provision.

In *Attorneys Ins. Mut. Risk Retention Grp., Inc. v. Liberty Surplus Ins. Corp.*, 2019 WL 643442 (9th Cir. Feb. 15, 2019), the Ninth Circuit construed a "related claims" provision included in two consecutive lawyers professional liability policies. During both the 2009–2010 and 2010–2011 insurance policy periods, attorney J. Wayne Allen ("Allen") was insured through his employer by Liberty Surplus Insurance Corporation's ("Liberty") professional liability insurance. Third parties filed suit against Allen during the 2009–2010 policy period in a probate case, and a second, related civil suit during the 2010–2011 policy period.

The 2010–2011 Policy was a "claims-made and reported policy," which required that any claim made during the 2010–2011 policy period against the insured be reported during the 2010–2011 policy period. One provision limited Liberty's liability for multiple related claims and provided, in relevant part:

**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** regardless of whether made against one or more than one Insured. All such **Claims**, whenever made, shall be considered first made during the **Policy Period** or any Extended Reporting Period in which the earliest **Claim** arising out of such acts, errors or omissions was first made, and all such **Claims** shall be subject to the same Limits of Liability.

The earlier probate suit was not reported to Liberty until the second policy period. When the civil suit was reported to Liberty (within the 2010-2011 policy period in which the claim was made), Liberty declined coverage for Allen in the civil action. Liberty argued that the "related claims" provision in the 2010–2011 Policy limited coverage so that if multiple claims regarding the same set of facts are made against an insured in multiple policy periods, the claims are all considered initially made during the policy period in which the first claim is made. Here, Liberty argued that by virtue of the "related claims" provision, both the probate case and related civil suit were deemed to have been first made during the 2009-2010 Policy period, when the original probate suit was first made. Further, because claims must be reported during the policy period in which they are made, Liberty asserted that it had no obligation to defend Allen against the civil action because he failed to report the earlier, related probate claim during the 2009–2010 policy period.

The District Court rejected Liberty's argument, and the Ninth Circuit affirmed. The court's analysis involved interpretation of one of the 2010–2011 Policy's defined terms, "Policy Period." In particular, the 2010–2011 Policy defined "Policy Period" as "the period from the Inception Date of this Policy to the Policy Expiration Date as set forth in the Declarations or its earlier termination date, if any." The "Declarations" identified the policy period as from July 31, 2010 until July 31, 2011. According to the court, the specific definition of "Policy Period" within the 2010-2011 Policy precluded Liberty's interpretation of the "related claims" provision.

The District Court reasoned that "[a]dopting Liberty's interpretation would require the court to give different meanings to the same term used in the same policy, which would run afoul of the rules of contract interpretation." Rather, the court held that the definition of "Policy Period" necessitated that the "related claims" provision be read to mean any relevant claims will be "considered first made during the Policy Period," *i.e.*, during the period from July 31, 2010, until July 31, 2011. In other words, the specific policy language in the 2010-2011 Policy only applied to "related claims" made within the 2010-2011 Policy period and that such claims will be deemed made when the earliest of claims was made during that policy period only, and not the prior policy period. The Ninth Circuit held that Liberty's chosen definition of "Policy Period" may create an ambiguity in the meaning of the multiple related claims provision as a whole, but it nevertheless sided against Liberty as any ambiguities in an insurance policy are resolved against the insurer.