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NEWS & EVENTS

February 15, 2020

California – Ninth Circuit Rules Against Insurer On Interpretation Of Related Claims Provision

BY:

In *Attorneys Ins. Mut. Risk Retention Grp., Inc. v. Liberty Surplus Ins. Corp*., 2019 WL 643442 (9th Cir.), the Ninth Circuit construed against the insurer a "related claims" provision included in two consecutive lawyers professional liability "claims made and reported" policies. The court found that the insurance company's proffered interpretation would necessarily run afoul of a standard rule of contract interpretation by ascribing different meanings to the same term used in the same policy.

The case involved an earlier probate claim made (but not reported) in the 2009-2010 policy and a civil suit made and reported in the subsequent 2010-2011 policy period. The insurer denied coverage on the grounds that the "related claims" provision meant that the claim was deemed made in the 2009-2010 policy period when the probate claim was made, and the lack of a report to the insurer of the claim in that earlier policy period meant that the notice of the civil suit in the latter policy period was too late. The Ninth Circuit, like the trial court, held that the "related claims" provision in the 2010-2011 policy, which said that claims arising from the same or related acts, errors or omissions will be deemed first made during the "**Policy Period**" or extended reporting period in which the earliest related claim was first made, necessarily meant the claim was considered first made during the 2010-2011 policy period. This is because the definition of "**Policy Period**" was the period specified in the declarations, i.e. the 2010-2011 policy period. The court said that the definition in the policy may create an ambiguity in the related claims provision as a whole, but any such ambiguity would be resolved against the insurer under basic California contract interpretation law.