

WWM WINS APPEAL IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

WWM attorneys Robert Conlon and Robert Arnold won an appeal on behalf of WWM's client, a professional liability insurance carrier, in the United States Court of Appeals for the Third Circuit.

The ruling affirmed the United States District Court for the District of New Jersey (USDCNJ) grant of summary judgment for WWM's client. WWM's client declined coverage for a third-party claimant's lawsuit for legal malpractice against one of the insured law firm's attorneys on the basis that the lawsuit related back to another claim against the attorney made outside of the policy period and, thus, did not constitute a "Claim" made during the policy's term of coverage. In response to the denial, the insured attorney and law firm filed a declaratory judgment action against WWM's client in New Jersey state court alleging that the client breached the insurance contract by declining coverage for the claim. WWM successfully removed the matter to the USDCNJ and thereafter the insureds filed a motion for summary judgment. WWM's client also filed a cross-motion for summary judgment.

Judge Peter J. Sheridan of USDCNJ, found in his 20-page Memorandum and Order that (1) the "interrelated wrongful act" provision contained within the policy was "clear and unambiguous"; and (2) the malpractice lawsuit filed during the policy period and the prior claim constituted a single "Claim" that fell outside of the coverage of the policy. The Court rejected the insureds' contention that the policy's prior firm endorsement required unconditional coverage for the lawsuit.

Judge Sheridan granted the client's cross-motion for summary judgment, denied the insureds' motion, and specifically determined that the underlying legal malpractice lawsuit is excluded from coverage by the policy's "interrelated wrongful act" provision. In light of this determination, the Court held that WWM's client has no duty to defend or indemnify the insureds in connection with the underlying legal malpractice lawsuit.

The Third Circuit Appellate Court found that the language of the Interrelated Wrongful Acts Provision was unambiguous and "any subjective misunderstanding that may have occurred could not rise to the level of showing that reasonable expectations were frustrated." In addition the court agreed that the Prior Firm Endorsement was unambiguous and that both complaints refer to the same "nucleus of events." Accordingly, the court affirmed the USDCNJ.

Szaferman, Lakind, Blumstein & Blader PC, et al. v. Westport Insurance Corporation, 2013 WL 2233915, (3d Cir. May 22, 2013). [Click here for opinion \(PDF\)](#).