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WALKER WILCOX SECURES SUMMARY JUDGMENT RULING FOR CLIENT IN COVERAGE AND BAD FAITH ACTION

On May 21, 2018, Walker Wilcox Matousek obtained summary judgment for Federal Insurance Company in the U.S. District Court for the Southern District of Illinois in *Market Street Bancshares, Inc. v. Federal Insurance Company*, 3:17-CV-00036-NJR-SCW (S.D. Ill. May 21, 2018).

In the declaratory judgment action, the insured sought defense, indemnity and statutory bad faith damages from Federal under a claims made liability policy issued from 2014 to 2017 in connection with an underlying lawsuit filed in 2003 alleging breach of contract, conversion and breach of fiduciary duty. The underlying lawsuit resulted in a verdict against the insured in excess of $16 million.

On behalf of Federal, Walker Wilcox removed the case to federal court and filed a counterclaim for declaratory judgment against the insured. After conducting minimal discovery, the parties filed cross-motions for summary judgment. Federal argued that it had no duty to defend or indemnify the insured for the 2003 underlying lawsuit because the lawsuit was not first made during the 2014 to 2017 Federal policy. Federal alternatively argued that even if, as the insured alleged, the damages sought by the claimants in the underlying trial somehow constituted a new claim, the Related Acts provision unambiguously precluded coverage, since any new damages asserted at trial were necessarily related to the 2003 complaint.

The insured argued that the claimants' request for damages during the 2016 trial pursuant to a contract, which had not been referenced in any pleadings or entered into evidence prior to trial, constituted a new, timely claim under the policy. The insured also argued that the Related Acts provision is ambiguous and thus, should be interpreted in favor of the insured. The insured further argued that Federal was estopped from denying coverage pursuant to the Illinois estoppel doctrine.

In granting judgment in Federal's favor, the Southern District of Illinois held that the claim was first made in 2003 and that any damages sought during the underlying trial were merely variations of the damages alleged in the complaint. The Court held alternatively that even if the damages asserted at trial constituted a new action, the Related Claims provision unambiguously precluded coverage. The Court rejected the insured's estoppel argument and correctly held that the doctrine was inapplicable, since Federal had no duty to defend and thus, did not wrongfully deny coverage.

Federal Insurance Company was represented by the Walker Wilcox team of Ed Gibbons and Kaitlin Calov.