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ALERT

Malpractice Actions by Multiple Clients for Separate Services Do Not Constitute Related Claims

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The Appellate Division of the New York Supreme Court, First Department, has held that four lawsuits alleging legal malpractice arising out of a mass marketing campaign for the provision of estate planning legal services did not constitute related claims because the lawsuits were filed by multiple clients to which the lawyer had provided separate services. *American Guar. & Liability Ins. Co. v. Chicago Ins. Co.*, 2013 WL 1760338 (N.Y. App. Div. Apr. 25, 2013).

The insured lawyer was sued by four clients. The lawyer solicited senior citizens in a mass marketing campaign to provide estate planning services. When the solicitation was accepted, the lawyer would refer clients to various financial services representatives. Four of the clients were victims of theft and fraud by their respective financial service representative. Two clients filed suit against the lawyer during one claims-made policy period, and two clients filed suit against the lawyer during the subsequent claims-made policy period. The insurer that issued the second policy denied coverage for the two later suits on the ground that those suits were the "same and/or related" to the suits filed during the previous policy period. The insurer that issued the first policy settled the lawsuits and filed suit against the insurer that issued the second policy to recover the settlement amounts paid for the two later suits.

The court held that the four lawsuits were not the "same and/or related." Rejecting the trial court's reasoning that the suits were related because the clients' relationship with the lawyer and the financial services representatives originated with the mass marketing solicitation, the court held that the lawyer provided separate services

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for separate clients because different financial representatives allegedly committed fraud and the amount sought from the lawyer by each client was different.

The opinion is available here.