

ALERT

Joint Lawsuit by Four Siblings Constitutes a Single Claim Because It Alleged Interrelated Wrongful Acts

April 9, 2014

The United States Court of Appeals for the Eighth Circuit, applying Minnesota law, has held that a lawsuit by four siblings against their financial advisor for negligent investment advice alleged “Interrelated Wrongful Acts” and constituted a single claim. *Kilcher v. Continental Cas. Co.*, — F.3d —, 2014 WL 1317296 (8th Cir. Apr. 3, 2014). Wiley Rein represented the insurer in the appeal.

The insured, a financial advisor, provided investment advice to four siblings, who were members of the Shakopee Mdewakanton Sioux Community, and were each introduced to the financial advisor by the siblings’ mother. Between 1999 and 2003, each sibling, upon turning 18, received an annual distribution from the community, and the financial advisor recommended that each sibling purchase a \$10 million whole life insurance policy. For the siblings with spouses and children, the financial advisor recommended that the siblings purchase whole life insurance policies for their spouses and children. The insured also recommended that the siblings invest in fixed annuities with surrender charges if the siblings withdrew funds before an annuity’s maturity.

In 2007, the siblings commenced separate arbitrations alleging that the financial advisor had breached her duties to the siblings by making misrepresentations concerning the investments and selling unsuitable investments. Subsequently, the siblings dismissed the arbitration and, in 2009, filed a single lawsuit against the advisor in Minnesota state court. The insurer paid the policy’s \$1 million per claim limit, and the parties agreed to litigate whether the policy’s \$2 million aggregate limit of liability, rather than the per claim limit,

Practice Areas

- D&O and Financial Institution Liability
- E&O for Lawyers, Accountants and Other Professionals
- Insurance
- Professional Liability Defense

applied. The United States District Court for the District of Minnesota held that the \$2 million aggregate limit of liability applied because the siblings' lawsuit alleged multiple claims and because the claims did not allege "Interrelated Wrongful Acts."

The Eighth Circuit reversed, holding that the siblings' claims in the lawsuit alleged "Interrelated Wrongful Acts" and were subject to the policy's \$1 million per claim limit of liability. The policy defined "Interrelated Wrongful Acts" as "any Wrongful Acts which are logically or causally connected by reason of any common fact, circumstance, situation, transaction or event," and provided that "more than one Claim involving . . . Interrelated Wrongful Acts shall be considered one Claim[.]" Although the court declined to hold that each plaintiff made only a single claim, the court held that the siblings' claims alleged Interrelated Wrongful Acts because the allegations were logically or causally related.

The court held that "[a]lthough [the financial advisor] made different alleged misstatements, omissions, and promises on different dates to each [sibling], there nonetheless exists a logical connection between her wrongful acts" and that the financial advisor harmed each sibling "individually and uniquely is not enough to overcome the Policy's broad language." The acts were committed by a single financial advisor with the alleged motive to generate commissions. The court also reasoned that each alleged wrongful act was logically related because each sibling was introduced to the financial advisor by the siblings' mother; each sibling was a young, unsophisticated investor with a significant income when the financial advisor began providing advice; and the financial advisor recommended that each sibling purchase whole life insurance policies and fixed investments. The court also held that the siblings alleged that the financial advisor breached her fiduciary duty to each sibling in the same manner.