

## Eleventh Circuit Rules That Indemnification Claim “Correlated” To Previous Claim And Was Thus Outside The Scope Of Coverage (Insurance Law Alert)

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The Eleventh Circuit ruled that a 2018 claim against a policyholder “correlated” with an act that gave rise to a previous claim made before the policy inception and was thus outside the scope of coverage. *Datamaxx Applied Tech., Inc. v. Brown & Brown, Inc.*, 2022 WL 3597311 (11th Cir. Aug. 23, 2022).

GTBM developed a software product that provides access to motor vehicle and warrant information from various law enforcement databases. GTBM entered into an agreement with Datamaxx to incorporate the product into Datamaxx’s existing product in order to create a jointly-developed enhanced product. However, GTBM subsequently initiated arbitration against Datamaxx, alleging that it violated the terms of the agreement by marketing its own competing product using GTBM’s technology. The parties ultimately settled. Following settlement, Datamaxx marketed another new product that also allegedly used the GTBM technology. GTBM again initiated arbitration against Datamaxx, alleging that it breached the 2014 settlement agreement, the original agreement and the implied covenants of good faith and fair dealing. Datamaxx tendered the claim to Chubb, which denied coverage. In ensuing litigation, a Florida district court granted Chubb’s summary judgment motion and the Eleventh Circuit affirmed.

The Chubb policy provided that “[a]ll claims that correlate with an act will be deemed to have been made at the time the first of such claims is deemed to have been made” and that coverage does not apply to any loss “in connection with any claim that correlates with an act, if such act also correlates with any claim deemed to have been made before the beginning of this policy period.”

As a preliminary matter, the Eleventh Circuit held that the district court erred in treating “correlate” and “relate” as synonymous and in applying “related claim” decisions as binding precedent. The Eleventh Circuit explained that while “correlates” is narrower than “relates,” it “requires nothing more than a showing that acts and claims ‘tend to vary, be associated, or occur together in a way not expected on the basis of chance alone.’” Applying this standard, the court concluded that the acts giving rise to the 2018 claim against Datamaxx correlated with the 2014 claim. The court explained that Datamaxx’s alleged second attempt to circumvent and violate its agreement with GTBM necessarily correlated with its first attempt to do the same thing.

Datamaxx argued that there was no correlation because each incident involved a different Datamaxx product that operated through distinct

functionality. The court deemed this a “distinction without a difference.”

Authors and  
Contacts

Bryce Friedman  
Partner  
[bfriedman@stblaw.com](mailto:bfriedman@stblaw.com)  
[+1-212-455-2235](tel:+12124552235)

Joshua Polster  
Partner  
[joshua.polster@stblaw.com](mailto:joshua.polster@stblaw.com)  
[+1-212-455-2266](tel:+12124552266)

