

Suit by Law Partner over Legal Fees Does Not Involve “Professional Services”

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A Florida appellate court has held that a professional liability insurer had no duty to defend a law firm that was sued by a former partner in a dispute over how to divide legal fees because the suit did not involve "any act, error or omission in Professional Services provided." *See Roberts v. Florida Lawyers Mut. Ins. Co.*, No. 4D02-1223, 2003 WL 729067 (Fla. 4th Dist. Ct. App. Mar. 5, 2003).

Following the termination of her employment with a law firm, an attorney sued her former law partner and the law firm for reimbursement of loans and for distribution of fees the firm had earned while she was at the firm. Her complaint included both individual claims and a derivative claim on behalf of the firm, alleging that the defendant attorney breached a fiduciary duty in his handling of the firm's money. The defendant law firm had lawyers professional liability coverage for "[a]ny act, error or omission in Professional Services provided or that should have been provided," including "services performed...as an administrator, conservator, receiver, executor, guardian, trustee, or any other similar fiduciary capacity," but not including "any matter pertaining to an insured lawyer's charges for services or expenses." The policy also contained an exclusion for "[a]ny Claim made against an Insured by a present, former or prospective partner...unless the Claim arises out of legal services[] performed in a lawyer-client relationship." The insurer denied coverage.

The court held that the policy did not provide coverage to the law firm because a dispute as to "how to divide money received from a lawsuit" was not an "act, error or omission in Professional Services provided." The court reasoned that "provide" contemplates the provision of services to third parties. Consequently, even though the derivative complaint alleged that the defendant attorney acted "as an administrator" or in a "fiduciary capacity," those actions did not arise from "Professional Services provided." Additionally, the court concluded that a dispute as to how to divide fees constituted a "matter pertaining to...charges for services or expenses," and thus was not included in the policy's definition of "Professional Services." Finally, the court reasoned that the exclusion for claims made against the firm by partners reinforced its conclusion. The court rejected as unreasonable the policyholder's argument that the exclusion did not apply to disputes between partners arising out of legal services performed in a lawyer-client relationship.

For more information, please contact one of WRF's Professional Liability Attorneys at 202.719.7130