

Alleged RICO Violations Not Covered Based on Late Notice, Lack of Professional Services

March/April 2002

The United States District Court for the Northern District of Illinois held that an insurer had no duty under a lawyer's professional liability policy to defend a policyholder law firm for its allegedly intentional and fraudulent conduct toward third-party insurance companies. *American National Fire Ins. Co. v. Harold Abrams, P.C., et al.*, No. 99-5807, 20002 U.S. Dist. LEXIS 2577 (N.D. Ill. Feb. 19, 2002).

The law firm sought declaratory judgment seeking coverage from its insurer under its professional liability policy for a lawsuit brought by an underlying plaintiff, another insurance company. The plaintiff insurance company alleged that the law firm engaged in a pattern of racketeering activities intended to defraud it and other insurance companies through their involvement in a scheme in which automobile accidents allegedly were caused so that participants in the scheme could pursue fraudulent bodily injury claims. The insurer denied coverage based on late notice and because the alleged accident scheme did not involve the provision of professional services.

First, the court found that notice of the claim, which occurred three years after the suit was filed and after the end of the operative claims-made policy period, was untimely as a matter of law.

Even assuming that the insurer received timely notice, the court found that the insurer still had no duty to defend because the insureds were not sued in their capacity as attorneys in the practice of law. Rather, they were sued based upon allegedly intentional and fraudulent conduct. The applicable policies provided coverage for claims "arising out of the rendering or failure to render professional services for others in the Insured's capacity as a lawyer or notary public." In holding for the insurer, the court reasoned that an attorney engaging in fraudulent conduct was not rendering professional services in the insured's capacity as an attorney. The court stated that "to hold otherwise would be to hold that the risk of fraud and RICO are inherent in the practice of law. This the Court cannot do."