

Administrative or Ministerial Acts Are Not Professional Services

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In an unpublished decision, a U.S. District Court in California, applying California law, held that a professional services policy did not provide coverage for allegations that a policyholder charged improper rates for its services, reasoning that billing practices are an administrative or ministerial service, not a professional service. *PMI Mortgage Ins. Co. v. Am. Int'l. Specialty Lines Ins. Co.*, No. C-02-1774 PJH (N.D. Cal. Dec. 16, 2002).

The insurer issued a policy to a mortgage insurer that provided mortgage insurance to lenders providing loans to homebuyers with a higher risk of default. The policy provided that "[t]his policy shall pay the Loss of the Insured...for any actual or alleged Wrongful Act of any Insured in the rendering or failure to render Professional Services." The mortgage insurer was sued for allegedly undercharging its lender clients for other insurance products in exchange for referrals on mortgage insurance. The plaintiffs in the underlying litigation had purchased mortgage insurance and alleged that the mortgage insurer failed to pass on the savings it generated from its lender clients on to them. Coverage litigation ensued over whether the allegations involved "professional services."

The trial court, while acknowledging that it was an "extremely close case," held that the allegations against the mortgage insurer did not involve "professional services" because they involved the ministerial or administrative tasks of billing. The court explained that "PMI is not accused of improperly issuing insurance policies or failing to provide insurance services to a client; rather, PMI has been charged only with undercharging its client for those products and services. Billing in and of itself is not a 'special risk inherent in the practice' of providing mortgage insurance."

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