

Legal Malpractice Policy Does Not Cover Suit Alleging Fraudulent Inducement in Connection with Client Referral

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The Louisiana Supreme Court has held that an attorney's professional liability policy does not cover a claim alleging liability to another attorney for fraudulently inducing the second attorney to accept a client with a matter that the policyholder purportedly allowed to lapse. *Elliott v. Continental Cas. Co.*, 2007 WL 530155 (La. Feb. 22, 2007).

The policyholder and his former associate, another attorney, were engaged in an ongoing fee dispute. The attorney's complaint against the policyholder included allegations that the policyholder fraudulently induced the attorney to accept a matter from a client that had lapsed as a result of malpractice by the policyholder. The attorney alleged that he would not have accepted the referral if he had known that the client's cause of action had expired. He sought his costs and fees associated with his representation of the client. The policyholder argued that the inclusion of an allegation that he committed malpractice triggered the insurer's duty to defend.

The policy covered claims made and reported during the policy period "by reason of an act or omission in the performance of legal services." The policy defined "legal services" as "those services performed by an Insured for others as a lawyer, arbitrator, mediator, title agent or as a notary public."

The Supreme Court of Louisiana held that the alleged conduct in the complaint did not constitute a claim for the failure to render legal services. The court reasoned that the policyholder never performed, or failed to perform, "legal services" on behalf of the attorney. Rather, the attorney alleged that the policyholder failed to inform him that the client's claim had expired. Thus, the attorney had filed suit "claiming that he suffered damages by not knowing that the case was prescribed as opposed to claiming that he suffered damages as a result of [the policyholder's] malpractice itself."

The court also reasoned that the allegation of malpractice did not constitute a "claim." According to the court, the attorney's "assertion that [the policyholder] 'malpracticed' by allowing [his former client's] cause of action to prescribe, is *merely descriptive* of the type of *information* that [the policyholder] allegedly withheld from" the attorney in his referral. Thus, the court concluded that the complaint did not allege a "claim" for

malpractice.