

Allegations Of Fraudulent Inducement Related To a Settlement Agreement May Constitute a Claim

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The United States District Court for the Eastern District of Pennsylvania has denied an insurer's motion for summary judgment, holding that a question of fact existed as to whether allegations of fraudulent inducement related to a settlement agreement constituted a claim against the insured under a professional liability policy. *Wolk v. Westport Ins. Corp.*, 2010 WL 3168379 (E.D. Pa. Aug. 9, 2010).

The insured was an attorney who represented plaintiffs in a wrongful death suit in which the parties reached a settlement. A few months later, one of the settling defendants filed a petition for relief from the settlement claiming that the underlying plaintiffs and the insured (who was not named in the petition) fraudulently induced the settlement by misrepresenting the amount of insurance available from other sources. The trial court denied the petition for relief. The Superior Court of Pennsylvania reversed the trial court's decision and remanded for an evidentiary hearing as to whether the insured and the underlying plaintiff committed fraud in the inducement. The trial court ultimately ruled in favor of the insured and the underlying plaintiffs.

The insured sued the insurer for failing to provide a defense in the state court proceedings. The federal district court held that the insureds were not entitled to a defense because the petition for relief from settlement did not constitute a claim against the insured. The Third Circuit reversed and remanded, noting that the district court "may have overlooked" the fact that the state court had remanded for an evidentiary hearing to determine whether the insured and the underlying plaintiffs committed fraud in the inducement of the settlement. Accordingly, the Third Circuit found that a question of fact existed as to whether the petition for relief from settlement constituted a claim and whether the claim was reported to the insurer.

On remand, the insurer presented new evidence, including a letter in which the settling defendant stated that it had not claimed that the insured in particular committed fraud and an email sent by the insured to its broker referencing a "potential prof liability claim." The insurer argued that this evidence established that no claim ever was asserted against the insured, at most a potential claim existed, and the insureds were aware of the potential claim before the relevant policy inception. The insurer also argued that the alleged claim was made prior to the policy's inception and that the prior knowledge exclusion barred coverage. The insured countered with one of the insurer's internal emails setting a reserve for the insured's potential exposure in

connection with the fraudulent inducement claim. The court found that a question of fact still existed as to whether and when a claim was made against the insured, and when the insured had knowledge of the claim, questions for which the current factual record either was insufficient or in dispute.