

Suit Seeking Referral Fees from Law Firm Arises Out of Professional Services

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Applying Texas law, the United States District Court for the Northern District of Texas has held that a lawsuit alleging that an insured law firm failed to split its legal fees with a claimant pursuant to a referral agreement arises out of professional services and thus triggers the insurer's duty to defend. *Shore Chan Bragalone Depumpo LLP v. Greenwich Ins. Co.*, 2012 WL 1205159 (N.D. Tex. Apr. 11, 2012).

The underlying suit alleged that, contrary to the terms of a referral agreement, the law firm had not paid the claimants any proceeds from the settlement of several patent licensing claims that had been referred to the insured by the claimants. The law firm's professional liability insurer denied coverage based on its position that the lawsuit did not "arise out of professional services" as required by the policy's insuring agreements because it involved a business decision by the law firm that was unrelated to its expertise in providing legal services.

In the coverage litigation that followed, the court held that the underlying lawsuit fell within the insuring agreements. Because the law firm provided "professional services" in the form of negotiating settlements and licensing agreements—a task that requires specialized skill and knowledge—the court held that the critical inquiry is whether the underlying lawsuit "arose out of" such services. Pursuant to Texas's broad interpretation of the phrase "arising out of," the court held that the law firm need only demonstrate that there was some direct or indirect causal connection between its professional services and the injury alleged by the claimants; the professional services did not need to be a "substantial factor" that led to the lawsuit. The court distinguished a case in which an underlying lawsuit against an attorney did not arise from "professional services" because it alleged injuries based only on improper billing and fee-setting practices, both of which are "properly understood as non-professional services." Here, by contrast, the insured law firm was performing legal services in the form of settlement negotiations at the time the claimants' alleged damages arose, and the insured therefore satisfied its burden of showing the requisite causal connection.