

# Lawyers Professional Liability Policy Excludes Coverage for Claims that Relate to an Insured's Business Activities Other than Practice of Law

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Applying New York law, the United States District Court, Southern District of New York, has found that a Lawyers Professional Liability Policy's business enterprise exclusions precluded coverage for the claims asserted against its insured. *Admiral Ins. Co. v. Adges*, 2012 WL 2426541 (S.D.N.Y. June 27, 2012).

In the underlying proceeding, the insured lawyer and his realty business were named as defendants in a state court action that arose out of a real estate transaction. The causes of action each stated that the realty business was owned or controlled by the lawyer. The insured lawyer tendered the defense of this action to his insurer who had issued him a Lawyers Professional Liability Insurance Policy.

The insurer brought a declaratory judgment action and later filed an unopposed motion for judgment on the pleadings, maintaining that the policy's business enterprise exclusions bar coverage. The first of these exclusions provided, in relevant part, that coverage is not available for a "[c]laim made against any Insured: based upon, arising out of . . . any Insured's activities or their capacity as: an officer, director . . . or employee of a business enterprise, not named in Item 1. of the Declarations [within the Policy]." The second exclusion provided, in relevant part, that coverage is not available when the claim is "by or in connection with any pre or post formation business enterprise, not named in Item 1. of the Declarations [within the Policy], in which any Insured owns . . . or controls . . . more than a 10 percent interest." Additionally, the policy provided that the business enterprise exclusions apply whether or not the insured's activities also constitute or involve Professional Services.

In finding in favor of the insurer, the court initially observed that business enterprise exclusions like those at issue "prevent collusive suits whereby malpractice coverage could be used to shift a lawyer's business loss onto the malpractice carrier." In addition, the court noted that business enterprise exclusions "avoid the circumstance where an insured so intermingles his business relationships with his law practice that an insurance carrier incurs additional risk of having to cover the insured for legal malpractice claims relating to the conduct of business, rather than solely out of the professional practice."

Because the claims in the underlying complaint in some way related to the insured's capacity as an officer and/or director of his realty business and that such entity was wholly owned and/or controlled by the insured, the court found that both business enterprise exclusions applied.