

Definition of Wrongful Act and Intentional Acts Exclusion Bar Coverage for Action Alleging Fraud and Conspiracy

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Applying Illinois law, the Appellate Court of Illinois has held, based on the policy's definition of "wrongful act" and its intentional acts exclusion, that a professional liability insurer has no duty to defend an action alleging fraud and conspiracy. *Ill. State Bar Ass'n Mut. Ins. Co. v. Cavenagh*, No. 1-11-1810 (Ill. App. Ct. Nov. 1, 2012). In light of the lack of a duty to defend, the court also dismissed the insured's claims for failure adequately to investigate, failure to conduct an independent review, and estoppel.

An insured attorney sought coverage for a claim alleging that he had advanced a personal injury claim while misrepresenting the status of the case to defense counsel in order to obtain a default judgment against the defendant. The attorney's professional liability insurer denied coverage for the action on the grounds that (i) the complaint did not allege a "wrongful act," defined in the policy as "[a]ny actual or alleged negligent act, error or omission" in the rendering of or failure to render professional services; and (ii) coverage was barred under an exclusion for claims "arising out of any criminal, dishonest, fraudulent, or intentional act or omission" committed by an insured. In the ensuing coverage litigation, the trial court granted the insurer's motion for summary judgment on its duty to defend and dismissed the attorney's counterclaims for breach of contract and estoppel.

The attorney appealed, and the appellate court affirmed. First, the court held that the complaint did not allege negligent acts, but rather intentional acts not covered under the policy, and thus that the insurer did not have a duty to defend the attorney in the underlying action. In so holding, the court declined to look to the dictionary definition of the phrase "wrongful act" where the policy definition was unambiguous. The court also rejected the attorney's argument that the word "negligent" in the definition of "wrongful act" modified only the word "act," and not "error" or "omission," reasoning that such an interpretation would be illogical and would conflict with the policy's intentional acts exclusion.

In light of its holding on the duty to defend, the court dismissed the attorney's additional breach of contract claims for failure adequately to investigate and failure to conduct an independent review, reasoning that such claims presupposed the existence of coverage under the policy. The court also rejected the attorney's estoppel claim, holding that (i) the insurer had avoided any estoppel claim by seeking a declaration as to

coverage; and (ii) in any event, estoppel does not apply where the insurer had no duty to defend.