

Professional Services Exclusion Does Not Bar Coverage for Deceptive Advertising Claim

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Applying Rhode Island law, the United States District Court for the District of Rhode Island has held that a professional services exclusion does not bar coverage for a law firm's allegedly deceptive advertising practices. *Rob Levine & Assocs., Ltd. v. Travelers Cas. & Sur. Co. of Am.*, 2014 WL 406509 (D.R.I. Feb. 3, 2014).

In the underlying action, several clients alleged that the insured law firm and two of its attorneys violated Rhode Island's deceptive trade practices statute by engaging in false advertising. Specifically, the clients asserted that the law firm's television and Internet advertisements gave the false impression that the insureds had special expertise in personal injury cases and had a superior ability to recover money, as compared to other Rhode Island attorneys. The law firm's insurer denied coverage under its D&O liability policy based on an exclusion stating that the insurer "will not be liable for Loss for any Claim based upon or arising out of any Wrongful Act related to the rendering of, or failure to render, professional services."

In the coverage litigation that followed, the court held that the professional services exclusion did not preclude coverage for the underlying suit, which "is about advertising, not the provision of legal services." The court reasoned that the insureds advertised to the general public—including both current and future clients—before performing any legal services. According to the court, the insurer's proposed interpretation of the professional services exclusion would render the policy "meaningless," as there would be no coverage for any conduct by the insureds.