

Alleged Misappropriation of Professional Service Business Potentially Implicates “Professional Services” Coverage

April 2014

The United States District Court for the Western District of Pennsylvania has held that a claim alleging that two insureds misappropriated tax lien business from a law firm arose out of the insureds' professional services and therefore was potentially covered by their professional liability policy. *Mun. Revenue Serv., Inc. v. Houston Cas. Co.*, 2014 WL 869505 (W.D. Pa. Mar. 5, 2014).

In an underlying case, a law firm sued a company and an individual accountant, among others, alleging that they unlawfully misappropriated confidential information from the law firm and used it to move tax lien services business away from the law firm. The law firm also accused the accountant of secretly stealing and transferring files from the law firm to a remote Internet location. The company and the accountant tendered the suit to an insurer that had issued them a professional liability policy, but the insurer refused to defend them. The insureds then brought suit seeking coverage under the policy.

The policy at issue afforded coverage for “any actual or alleged negligent act, error, omission or breach of duty committed or alleged to have been committed, or for failure to render, such Professional Services as are customarily rendered in the profession of the Insured” Further, the policy defined the term “Professional Services” to include “[s]olely ... the performance of providing a Tax preparation and/or Bookkeeping Service and/or providing Tax Lien Services, for others for a fee” Relying on those provisions, the insurer moved to dismiss the coverage suit on the grounds that the policy afforded no coverage for the underlying claim because it was based on a business dispute over client files and retention rather than any act, error, or omission in professional services. The court disagreed, ruling that there was a plausible argument—sufficient to survive a motion to dismiss—that the insured's acts, whether illegal or not, included elements or actions that could be conducted in the course of its professional work. Therefore, the court denied the insurer's motion to dismiss.