

ALERT

No Coverage Where Complaint Alleges Lawyer Acted as Unlicensed Broker

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The United States District Court for the Middle District of Florida held that there was no coverage and no duty to defend under a lawyers professional liability insurance policy for a lawsuit that failed to allege that the insured attorney acted in his capacity as a lawyer on the grounds that there was no Wrongful Act as defined by the policy. *Rissman, Barrett, Hurt, Donahue & McClain, P.A., et. al. v. Westport Ins. Corp.*, No. 6:10-cv-898-Orl-35GJK (M.D. Fla. July 19, 2011).

The underlying lawsuit, which stemmed from the sale of real property, alleged that the insured attorney acted as an “unlicensed broker,” collected a commission that violated Florida law, negligently misrepresented material facts regarding the property, and conspired to induce the plaintiff into purchasing the property. The insurer denied coverage, asserting that there were no allegations arising from “Professional Services” rendered by the attorney, as necessary to constitute a “Wrongful Act.” The plaintiffs contended that the duty to defend was not based on the actual counts or claims in the complaint, but rather could be triggered if the factual allegations in the complaint potentially provided grounds for a covered liability.

The court rejected the plaintiff’s argument, stating that under Florida law, the duty to defend depends exclusively on the legal theories and claims alleged in the complaint. The court refused to draw inferences from the alleged facts to determine whether an alternate theory not asserted in the complaint might possibly support coverage under the policy. The policy’s coverage extended only to alleged “Wrongful Acts” in the provision of “Professional Services,” which the policy defined as “services rendered in the insured’s capacity as a lawyer.” The underlying complaint did not allege that the attorney rendered legal services to the plaintiff, and in fact expressly stated that the

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attorney was not acting in his professional role as an attorney at law. Under the circumstances, the court “decline[d] to infer that [the attorney] rendered services as an attorney simply because he was licensed to do so.” In the absence of a “Wrongful Act” in the provision of “Professional Services,” the court concluded that there was no coverage under the policy and granted summary judgment for the insurer.