wiley

ALERT

Policy Affords No Coverage to Law Firm for Claim Arising from Attorney's Business Enterprise

January 25, 2013

An Illinois intermediate appellate court has held that a professional liability policy afforded no coverage to a law firm for a claim arising out of a firm attorney's conduct in connection with a business entity controlled by that attorney. *Am. Zurich Ins. Co. v. Wilcox & Christopoulos, L.L.C.*, 2013 WL 212024 (Ill. App. Ct. Jan. 17, 2013).

A disgruntled investor filed suit against a number of defendants and alleged that they were involved in a civil conspiracy to open and operate a restaurant/lounge by illegal means. In particular, the investor alleged that the defendants committed perjury, made fraudulent misrepresentations and violated numerous state and local laws by misrepresenting and concealing the ownership structure of a partnership formed to open the restaurant/lounge so as to enable it to obtain a liquor license. The investor asserted that those same misrepresentations were made to it and other investors as well. Named defendants included, among others, the partnership, a law firm, one of the law firm's attorneys and an LLC owned and controlled by the attorney and another individual. The investor's complaint alleged that the partnership hired the attorney and his LLC to obtain a liquor license for the restaurant/lounge, and it contended that the attorney acted both individually and within the scope of his employment with both the law firm and the LLC in rendering services to the partnership.

The law firm tendered its defense of the action under its professional liability insurance policy. The insurer denied coverage to both the law firm and the attorney, contending, *inter alia*, that coverage was barred by an exclusion for "any Claim based upon or arising out of,

Practice Areas

D&O and Financial Institution Liability

E&O for Lawyers, Accountants and Other Professionals

Insurance

Professional Liability Defense

in whole or in part . . . [t]he alleged acts or omissions by any Insured . . . for any business enterprise . . . in which any Insured has a Controlling Interest." In coverage litigation that followed, the court rejected the law firm's arguments that the attorney's work was done *for* the partnership and not *for* the LLC or, in the alternative, that the exclusion was ambiguous and thus should be construed against the insurer. Instead, the court held that the term "for" unambiguously meant "for the benefit of," and it concluded that the complaint alleged that the attorney worked "for the benefit of" both the LLC and the partnership. The court reasoned that there was no contention that the attorney "agreed to altruistically engage" the LLC as opposed to doing so for that entity's benefit. The court also focused on the language of the exclusion as a whole, which barred coverage for "alleged acts or omissions by *any* Insured . . . for any business enterprise . . . in which *any* Insured has a Controlling Interest," and it held that the plain language of the exclusion foreclosed coverage for the both the law firm and the attorney since the attorney was an Insured under the terms of the policy.

The opinion is available here.