

ALERT

Legal Services Provided Without Charge in Settlement of Prior Claims Constitute “Professional Services”

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Applying Virginia law, a federal district court has held that legal services provided to a client in exchange for a release of prior claims of malpractice constitute “professional services” within the scope of coverage of the insured lawyers’ professional liability policy. The court also found that the policy’s “past acts” exclusion did not apply to bar coverage for the subsequent claim. *Admiral Ins. Co. v. Marsh*, 2013 WL 3270555 (E.D. Va. June 26, 2013).

Before the inception of the policy at issue, the insureds had acknowledged certain errors in connection with the handling of three separate legal matters for a client. In settlement of those claims, and as “full compensation for the release,” the insureds agreed to handle any future litigation for the client without charge for a period of one year. Pursuant to this agreement, the insureds defended the client in a defamation action in which a judgment ultimately was entered against the client. The client subsequently sued the attorneys, alleging that they committed malpractice in that case.

The lawyers’ insurer denied coverage for the malpractice claim, contending that the services rendered to the client in the defamation action did not constitute “professional services,” which the policy defined to mean “service[s] performed by an Insured . . . for remuneration inuring to the benefit of the Named Insured.” According to the insurer, because the services were provided at “no charge,” they were not performed for “remuneration.” The court disagreed, finding that the plain meaning of the term, as set forth in *Black’s Law Dictionary*, includes “payment” and “compensation.” In this regard, the court pointed out that, by the express terms of the parties’

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settlement agreement, the legal services provided in the defamation action were provided as full "compensation" for the release of the prior claims of malpractice.

The court also rejected the insurer's reliance on the policy's "past acts" exclusion, precluding coverage for any claim involving a wrongful act that occurred on or after July 3, 2006 which, together with a wrongful occurring prior to that date, constituted a "related wrongful act." The policy defined "related wrongful act" to mean "wrongful acts, which are logically or causally connected by reason of any common fact [or] circumstance." According to the court, even though the prior acts of malpractice for which the insureds obtained a release occurred before July 3, 2006, the exclusion did not apply because those acts were not in any way connected to the later acts allegedly committed in connection with the defamation action "other than by an ongoing relationship between [the client] and the [insureds]."