Professional Liability Insurer has Duty to Defend Suit Over Law Firm Split Where the Allegations Encompass Professional Obligations as well as Business Decisions.

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Professional liability coverage disputes often turn on the question whether the alleged conduct constitutes "professional services," or business activities of a non-professional nature. So, for example, filing a client's complaint within the statutory limitations period is clearly a "professional service" under a lawyer's professional liability policy. On the other hand, case law holds that billing clients is not. In the recently decided case of *Governo v. Allied World Insurance Company*,United States District Court for the District of Massachusetts, Civil Action No. 17-11672 (September 28, 2018) (Wolf, D.J.), the conduct alleged – notifying clients and transferring files after a group of lawyers left the insured law firm – might seem to fall on the business rather than the legal side of this divide. In addition, the persons making the claims were not the affected clients but rather former members of the insured law firm. Nevertheless, the court determined that the claims fell within the insurer's broad duty to defend.

After the split, the old firm sued the departing lawyers and their new firm. The departing lawyers' counterclaims included a count for intentional interference with business relations alleging that the old firm refused to cooperate in notifying clients of the split, and failed to transfer and release all client materials.

The old firm sued its professional liability insurer, seeking a declaration that the insurer had a duty to defend the counterclaims. The insurer moved to dismiss. The District Court denied the motion, finding that the counterclaims were reasonably susceptible of an interpretation that it stated a claim covered by the policy.

The policy covered claims "arising out of . . . [a] Legal Services Wrongful Act" and defined "Legal Services" to mean "services performed on behalf of the Named Insured for others by an Insured . . . but only where such services were performed in the ordinary course of the Insured's activities as a lawyer." The court held that the allegations against the firm concerning notification to clients and transfer of client files implicated professional rules and ethical duties specific to the legal profession. Those allegations therefore created the potential for coverage requiring the insurer to defend the entire counterclaim. The fact that notices to clients and transfer of client files (or the failure to do so) had a business as well as a professional component did not preclude coverage. Further, the court observed that the use of the phrase "arising out of" to define the relationship between a covered claim and the "Legal Services Wrongful Act" required an expansive view of causation and resulted in a lower burden for an insured seeking coverage.

The court also concluded that the policy's "insured versus insured" exclusion did not defeat coverage. The policy excluded claims between Insureds, and defined "Insured" to include former partners or employees, but only for the performance of Legal Services on behalf of the insured firm. Because the departing lawyers' conduct at issue in the suit was not on behalf of the old firm, the court held, the "insured versus insured" exclusion did not apply.

Professional liability policies are less standardized than, for example, general liability policies, making broad pronouncements about coverage unhelpful. However, depending on the specific policy language and the claims at issue, what might appear to be a business dispute among former partners may be sufficiently rooted in legal services to be covered under a lawyer's professional liability policy.