



Alerts

Lawyer's Alleged Intentional Misconduct Excluded from Professional Liability Coverage

June 6, 2018

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Illinois State Bar Association Mutual Insurance Company v. Leighton Legal Group, LLC, 2018 IL App (4th) 170548 (May 22, 2018)

Brief Summary

Plaintiff, a professional liability insurer, filed a declaratory judgment action against defendants, its insureds—a law firm and attorney—contending it had no duty to defend because insured's actions constituted intentional conduct and was excluded from coverage. The appellate court held the trial court erred in granting judgment for insured because the conduct of insured, as alleged in underlying complaint (alleging self-dealing, breach of good faith and fair dealing, and breach of trust for failure to administer a trust), was intentional misconduct, which was excluded from coverage.

Complete Summary

The remainder beneficiaries of a trust sued the attorney who represented the trust and was a co-trustee of the trust, alleging that the lawyer engaged in willful misconduct. The attorney's professional liability insurer filed an action for declaratory judgment contending that it had no duty to defend, because his actions constituted intentional conduct and was excluded from coverage. The trial court concluded the insurer had a duty to defend under the terms of the policy. The insurer appealed.

The appellate court reversed, finding that the attorney's conduct, as alleged in the underlying complaint, was excluded from coverage because the allegations were those of willful misconduct that included: (1) the insured "willfully refused to distribute the remaining trust assets;" (2) self-dealing by the insured, by refusing to liquidate the trust corpus "in order to perpetuate [his] self-compensation scheme;" (3) the insured willfully misinformed the plaintiffs in bad faith that they were not entitled to distribution of the trust corpus; (4) the insured "committed breach of trust by willfully disregarding the termination provision of the trust and refusing to distribute the trust assets;" and (5) the insured as trustee "willfully committed [a] serious breach of trust in failing to fulfill [his] fiduciary duties."

The professional liability policy provided coverage for "any actual or alleged negligent act, error, or omission in the rendering of or failure to render professional services," including conduct as a trustee, but it explicitly excluded

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from coverage any claim "arising out of any criminal, dishonest, fraudulent or intentional act or omission."

The court stated that the construction generally afforded to intentional act exclusions is to deny coverage where the insured has (1) intended to act and (2) specifically intended to harm a third party. In discussing the element of intent, the court noted that "[t]he word 'intent' for purposes of exclusionary clauses in insurance policies denotes that the actor desires to cause the consequences of his action or believes that the consequences are substantially certain to result from it."

The court found that its construction of "intentional act or omission" to mean "intentional misconduct" was supported by the doctrine of *noscitur a sociis*, which holds that a court may determine the meaning of a word by examining the meaning and context of the surrounding words. Here, the policy stated that it did not cover a claim "arising out of any criminal, dishonest, fraudulent or intentional act or omission" committed by the insured, and that the phrase "intentional act or omission" was within the broader context of an exclusionary clause denying coverage for dishonest acts.

Noting that the insurer may refuse to defend only if it is clear from the face of the underlying complaint that the allegations fail to state facts that bring the cause within—or potentially within—coverage, the appellate court agreed with the insurer that it had no duty to defend because the alleged actions were "dishonest, intentional, and fraudulent and therefore excluded from coverage." The court explained that phrases in the underlying complaint such as mislead, conceal, scheme, deceive, intentionally, or willfully are the "paradigm of intentional conduct and the antithesis of negligent actions," so that the alleged conduct could not be the result of mere professional negligence, but was intentional conduct. As a result, the insurer did not have a duty to defend.

Significance of the Decision

This decision demonstrates that courts will enforce policy exclusions for willful or intentional misconduct and find an insurer owes no duty to defend, but only where it is clear from the face of the underlying complaint that the allegations fail to state facts that bring the cause within, or potentially within, coverage.

For more information, please contact Terry McAvoy.