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REGIONAL NEWS

Legal Malpractice Insurers Off the Hook in Pair of Cases

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At O'Brien & Ryan, part of attorney Anthony P. DeMichele's job is to fight to make sure that lawyers don't get any coverage under their legal malpractice policies when they don't deserve it.

Recently he's had a bit of a winning streak.

Federal judges in Philadelphia and Harrisburg have handed down a pair of opinions declaring that DeMichele's client, the Minnesota Lawyers Mutual Insurance Co., has no duty to defend two lawyers who sought coverage for lawsuits lodged against them.

In both cases, the lawyers were sued by investors who claim the lawyers played key roles in either devising or arranging the investments, which later turned out to be scams.

Minnesota Lawyers Mutual argued in both cases that coverage should be denied because the lawyers weren't acting as lawyers, and that the allegations lodged against them didn't focus on any alleged negligence in the provision of legal services.

But those weren't the winning arguments.

Instead, both cases ultimately hinged on policy exclusions. In one, the judge sided with MLM and

held that coverage was properly denied on the basis of an exclusion that bars coverage for "any claim for damages arising out of the dishonest, criminal, malicious or deliberately fraudulent act."

In the second case, the judge enforced an exclusion that bars coverage for "any claim arising out of the solicitation or sale of specific securities or specific investments."

In both cases, the judges' decisions were purely based on the plaintiffs' claims in the underlying cases. But neither lawyer has been found to have committed any negligent act.

In *MLM v. Mazullo*, attorney Christopher Mazullo of Mazullo & Murphy in Doylestown, Pa., sought coverage to defend himself in two lawsuits in Bucks County brought by



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investors in real estate projects.

According to court papers, both suits alleged that the plaintiffs had invested money through the Doylestown Investment Group, and that Mazullo and other defendants connected to DIG had "intentionally misrepresented the real estate investment scheme."

Both suits allege that Mazullo and the other defendants misappropriated their money.

MLM's first argument was that the policy covers only claims that result from "the rendering or failing to render professional services" and that the suits against Mazullo were not covered because they made no complaint about the quality or lack of any professional services.

Mazullo's lawyer, Christopher P. Kelly, also of Mazullo & Murphy, argued that Mazullo was always acting as the lawyer for DIG, and that all of the claims arose out of his performance of those lawyering duties.

U.S. District Judge Eduardo C. Robreno concluded that the term "professional services" was ambiguous and therefore must be construed in favor of Mazullo.

But Robreno sided with MLM on its next argument, declaring that it has no duty to defend Mazullo because of the policy exclusion that bars coverage for lawsuits “arising out of” the insured lawyer’s “dishonest” or “deliberately fraudulent” acts.

Kelly argued that the exclusion should not bar coverage because Mazullo has specifically denied that he engaged in any dishonest, criminal, malicious or fraudulent activities.

But Robreno sided with MLM, finding that the coverage question hinged on the nature of the allegations lodged in the underlying suits.

Both suits, Robreno found, “make allegations of dishonesty, fraud and maliciousness,” with one of the plaintiffs accusing Mazullo of actions that were “intentional, knowing, willful, wanton, malicious, and/or reckless with the specific intent of harm.”

Robreno concluded that such allegations of “dishonest, malicious and deliberately fraudulent” conduct are “precisely the types that are intended to be excluded from coverage under the policy.”

Neither Kelly nor Mazullo could be reached for comment.

In *MLM v. Ahrens*, U.S. Circuit Judge William W. Caldwell rejected arguments by former clients of attorney Thomas J. Ahrens and the Ahrens Law Firm in Mechanicsburg, Pa., who urged the judge to declare that malpractice insurance would be available to cover their lawsuits.

MLM argued that the case was a

simple one because Ahrens had been sued in connection with his “solicitation of investments” that the plaintiffs now claim were fraudulent. In one case, the plaintiff was seeking \$400,000, and in the second, a group of plaintiffs sought more than \$8.7 million.

But lawyers for the clients argued that Ahrens had acted as their lawyer in arranging a series of loans and that the exclusion therefore should not apply.

In both cases, the judges’ decisions were purely based on the plaintiffs’ claims in the underlying cases.

Caldwell was unimpressed, saying that the plaintiffs’ use of the term “loan” rather than “investment” was not enough.

“We cannot be bound by the plaintiffs’ draftsmanship,” Caldwell wrote, “if in substance their allegations describe activity falling within the exclusion.”

Coverage was properly denied, Caldwell said, because “regardless of whether the plaintiffs call it ‘providing funds’ or making a ‘loan,’ they did expect to receive a return on the money they gave Ahrens. This makes their transactions an investment, as the latter word is commonly understood.”

Ahrens’ lawyer, David H. Cook of Farrell & Reisinger in Pittsburgh, did not return a call seeking comment on the ruling.

Attorney Charles O. Beckley II of Beckley & Madden in Harrisburg, who is the lead lawyer for the former clients of Ahrens, also did not return a call seeking comment.

(Copies of the 17-page opinion in MLM v. Mazullo., PICS No. 10-1977, and the 12-page opinion in MLM v. Ahrens, PICS No. 10-1978, are available from The Legal Intelligencer. Please call the Pennsylvania Instant Case Service at 800-276-PICS to order or for information. Some cases are not available until 1 p.m.) •

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