

Billing for Legal Services Does Not Constitute "Professional Services"

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A Massachusetts appellate court has held that a legal malpractice policy did not provide coverage for an underlying judgment requiring an attorney to repay amounts that were improperly billed to a client because "the billing function of a lawyer is not a professional service." *Reliance Nat'l. Ins. Co. v. Sears, Roebuck & Co.*, 2003 WL 21742250 (Mass. App. Ct. July 30, 2003).

The insurer provided coverage to an attorney for claims arising "out of the rendering or failure to render professional services for others in the insured's capacity as a lawyer." In an underlying lawsuit, the attorney was found liable to one of his clients for approximately \$950,000 in fees that the court found the attorney was not entitled to receive. The appellate court held that the attorney was not entitled to coverage for that amount because billing is not a professional service. The court explained that "[b]illing for legal services does not draw on special learning acquired through rigorous intellectual training.... The billing function is largely ministerial."

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