

Dishonesty and Prior Knowledge Exclusions Bar Coverage for Claim for Misappropriation of Funds

May 2009

The United States District Court for the Southern District of Florida granted summary judgment for an insurer pursuant to a professional liability insurance policy's dishonesty and prior knowledge exclusions based upon the insured's sworn statements that he misappropriated client funds. *Westport Ins. Co. v. Law Offices of Gerald J. Lindor, P.A.*, 2009 WL 722254 (S.D. Fla. Mar. 18, 2009).

In June 2008, the insured attorney notified the insurer of a claim brought by former clients alleging that the insured attorney had misappropriated approximately \$471,000 in loan closing funds. The following month, the Florida Supreme Court disbarred the insured attorney. In connection with the disciplinary proceedings, the insured attorney admitted that he had misappropriated approximately \$3 million from clients over the course of the preceding 10 years and that he was aware that he had misappropriated the claimants' funds one month before the policy inception.

In this resulting coverage action, the court granted summary judgment for the insurer. The court first found that coverage was barred by an exclusion for "any claim based upon, arising out of, attributable to, or directly or indirectly resulting from . . . any intentional, criminal, dishonest, malicious, or fraudulent . . . act, error [or] omission." The court concluded that the insured's admission that he intentionally used the claimants' funds to pay his own obligations left no doubt that the claim arose from the insured's "intentional, dishonest and fraudulent acts," and therefore was excluded from coverage.

Likewise, the court found that coverage was precluded by an exclusion for "any claim based upon, arising out of, attributable to or directly or indirectly resulting from . . . any wrongful act occurring prior to the effective date of [the policy] . . . if the Insured at the effective date . . . knew or could have reasonably foreseen that such wrongful act might be expected to be the basis of a claim . . ." The court noted that the insured had admitted to misappropriating clients' funds over a 10-year period, and that he knew one month before the policy inception that he had misappropriated the claimants' funds for his own use. The court held that these admissions "form[ed] the basis of the very wrongful act that [the insured] 'knew or could have reasonably foreseen . . . might be the basis of a claim.'" Since the wrongful acts preceded the policy's inception date, the

court held that the prior knowledge exclusion barred coverage for the claim.