

## Dishonesty Exclusion Bars Claims for Intentional Misrepresentation

---

June 2010

Applying Pennsylvania law, the United States District Court for the Eastern District of Pennsylvania has held that a dishonesty exclusion in a lawyers' professional liability policy precluded coverage for claims by investors alleging that the insured attorney intentionally misrepresented a real estate investment scheme. *Minn. Lawyers Mut. Ins. Co. v. Mazullo*, 2010 WL 1568465 (E.D. Pa. Apr. 19, 2010). Before addressing the dishonesty exclusion, however, the court held that the policy term "professional services" was ambiguous and thus concluded that the investors' claims fell within the policy's coverage grant.

The insured, an attorney for an investment group, was sued in two actions for his role in several real estate investment projects. Two investors filed complaints alleging that the insured and other defendants intentionally misrepresented the investment group's real estate investment scheme to induce them to invest. The attorney purportedly prepared the investment agreement and documents for the investment group, which the investors signed. Both lawsuits claimed, *inter alia*, breach of fiduciary duty, conversion and intentional misrepresentation/fraud against the attorney.

Because the policy provided coverage for damages due to any claim "resulting from the rendering or failing to render professional services," the court first addressed the policy's definition of "professional services." The court noted that the policy defined "professional services" in part as "legal or notary services for others." Citing only cases in which the term "professional services" was not defined in the policy, the court found the term ambiguous notwithstanding that the relevant policy defined the term. Despite recognizing that the investors' complaints did not directly implicate the insured's legal work, the court stated that ambiguous policy terms "must be interpreted in favor of the insured," and thus interpreted the investors' allegations as stemming from the insured's "professional services."

Having concluded that the claim fell within the policy's coverage grant, the court considered whether the policy's dishonesty exclusion applied. The dishonesty exclusion precluded coverage for "any claim for damages arising out of the dishonest, criminal, malicious or deliberately fraudulent act, error or omission of the insured." Rejecting the insured's argument that the exclusion does not bar coverage because he had specifically denied that he engaged in any dishonest, criminal, malicious, or fraudulent activities, the court noted the investors' complaints accused the attorney of "actions and/or omissions that were intentional, knowing, willful, wanton, malicious, and/or reckless with the specific intent of harm." Accordingly, the court

found that the policy's dishonesty exclusion precluded coverage for the investors' claims.