

## No Coverage For Suit Concerning Insured Lawyer's Sale of Investments

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The United States District Court for the Middle District of Pennsylvania, applying Pennsylvania law, has held that coverage is excluded under a lawyers liability policy pursuant to an exclusion barring coverage for claims “arising out of the solicitation or sale of . . . specific investments” where the insured was alleged to have obtained money from the insured's clients, with the promise of a return on their money, to give to another client to purchase gold commodities. *Minn. Lawyers Mut'l Ins. Co. v. Ahrens*, 2010 WL 3975627 (M.D. Pa. Oct. 8, 2010).

The plaintiffs in the underlying action alleged that the insured lawyer and firm, which had previously provided legal services to the plaintiffs in unrelated matters, obtained a total of \$8.7 million from the plaintiffs that was to be used for “loans” or “investments” to other individuals in order to purchase gold futures or commodities. The underlying complaint alleged that the insureds presented the plaintiffs with a “moneymaking opportunity” with certain promised rates of return, but that the plaintiffs did not receive any returns on their money. The plaintiffs alleged claims against the insureds for professional negligence, negligent misrepresentation and breach of fiduciary duty in connection with the insureds' alleged failure to investigate the individuals that ultimately purchased the gold commodities and futures, failure to disclose that there was a conflict of interest because the insureds also represented those individuals, and misrepresentation that the loans and/or investments carried no risk.

The insurer issued a lawyers professional liability policy to the insured that excluded from coverage “any CLAIM arising out of the solicitation or sale of specific securities or specific investments by any INSURED.” The insurer disclaimed coverage for the underlying action based upon this exclusion.

The court held that coverage was “excluded because the loans were ‘investments’ as commonly understood since the [underlying] plaintiffs ‘expected[ ] to receive a return on the money they gave [the insureds].’” The court rejected the defendants' contention that the meaning of “investments” is a factual issue and that they should be permitted to proceed through discovery and attempt to prove that they had engaged in “loan transactions” and not “investments.” The court noted that Pennsylvania law provides for the reliance on the dictionary definition of terms and that “investment” is defined as “an expenditure of money for income or profit.” Because the underlying complaint alleged that the insureds presented the plaintiffs with “business opportunities” with “extraordinarily high rates of return,” the court held that the “allegations come within the

definition of an investment since they were expenditures of money for income or profit.”

The court also rejected the argument that the claims arose out of the insureds' failure to investigate the individuals who made the investments, a claim the insureds asserted would be covered, instead finding that the claims arose out of the insured's solicitation and sale of specific investments. The court distinguished *Board of Public Education v. National Union Fire Insurance Co.*, 709 A.2d 910 (Pa. Super. 1998), and *Coregis Insurance Co. v. City of Harrisburg*, No. 03-920, 2005 WL 2179734 (M.D. Pa. Sept. 9, 2005), in which courts applying Pennsylvania law found coverage in cases involving excluded conduct of a third party alleged to have injured an underlying plaintiff as well as separate conduct by the insured that allowed the conduct by the third party. Here, the court noted, the underlying action “complain[s] only about the conduct of [the insured lawyer],” and not the acts of any third party that committed excluded acts. The court recognized that the insured “is alleged to have solicited and sold the investments and to have been negligent in failing to investigate the [individual investors] and in his misrepresentations about the investments.” Nonetheless, the court concluded that the underlying claims “arose out of the solicitation or sale of specific investments and are therefore not covered under the policy.”