

Exclusion Bars Coverage for Claims Against Lawyer Acting as a Mortgage Broker

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A Connecticut appellate court has held that a lawyer's professional liability policy excluded coverage for claims against a lawyer in his capacity as the owner of a mortgage brokerage for alleged breaches of duty in arranging and closing loans and real estate purchases. *Lancia v. State Nat'l Ins. Co.*, 2012 WL 108846 (Conn. App. Ct. April 10, 2012). The court held that no duty to defend existed, notwithstanding that the underlying complaints alleged that the insured acted as an attorney in connection with the real estate transactions.

The underlying litigation that gave rise to the coverage dispute involved a series of allegedly fraudulent real estate transactions. The insured lawyer had been sued in four underlying lawsuits by mortgage borrowers who alleged that he breached duties while acting as an attorney and as the owner of the mortgage brokerage company that provided settlement and closing services in the real estate transactions. The complaints alleged that the insured provided legal representation to the sellers in the transactions, while misleading the borrowers to believe that he was providing legal representation to them.

In the coverage litigation, the insured attorney argued that the insurer had a duty to defend because, even though the underlying complaints made allegations against him in his capacity as the owner of a mortgage brokerage, the complaints also included allegations against him as an attorney, with no connection to the brokerage. The court rejected this argument, holding that coverage was barred by a policy exclusion, which provided that there was no coverage for any claim arising out of any insured's "activities as an officer, director, partner, manager, or employee of any company, corporation, operation, or association" other than the named insured law firm. The court held that the underlying complaints were "devoid of any allegations" not predicated on the insured's role as a mortgage broker. Even if the insured's conduct in part involved the rendering of legal services – which might otherwise be covered – the court held that such conduct "arises out of and is inextricably intertwined with" the insured's conduct as the owner or principal of the mortgage brokerage and his role as a mortgage broker. Thus, the exclusion unambiguously precluded coverage, and the court held that the insurer had no duty to defend the underlying claims.