

# Legal Malpractice Claim Alleging Overbilling Is Not a Claim for Damages

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In a brief opinion, the First Department of the New York Supreme Court, Appellate Division, has affirmed a trial court order holding that an insurer was not obligated to defend or indemnify its insureds against an underlying legal malpractice claim and was entitled to reimbursement for amounts spent defending that claim. The appellate court held that “[a] claim for the return of legal fees is not a claim for ‘damages’ . . . as defined in the professional liability policy . . .” The court also affirmed the trial court’s award of attorneys’ fees to the insurer for the coverage action. *Certain Underwriters at Lloyd’s London Subscribing to Policy Number SY v. Lacher & Lovell-Taylor, P.C.*, 112 A.D.3d 434 (N.Y. App. Div. Dec. 5, 2013).

In affirming the ruling, the appellate court stated that “[a] claim for the return of legal fees is not a claim for ‘damages’ in a legal malpractice action.” Because the underlying complaint alleged only that the insureds “overbilled their client in the underlying estate proceeding” and not that, “but for their negligence, [claimants] could have achieved a better result,” there was no coverage for the underlying action under the policy. The court also noted that the insurer “reserved its right to seek reimbursement of its defense costs in the event of a finding of no coverage.”