

ALERT

No Coverage for Lawyer's Alleged Self-Dealing

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A federal district court in Nevada has granted an insurer's motion for summary judgment, holding that the business enterprise, trust, and investment advice exclusions in a lawyers professional liability policy barred coverage for a suit alleging self-dealing by the insured attorney and his firm. *Christensen v. Darwin Nat'l Assurance Co.*, No. 2:13-CV-00956-APG-VCF (D. Nev. Apr. 14, 2014). Wiley Rein represented the insurer.

A corporate client, which owned property on the Las Vegas Strip, retained a law firm and its named partner in connection with an eminent domain matter. During the course of that representation, the attorney purchased a 50% stake in the client through a trust, of which the attorney was the trustee and both he and his family members were beneficiaries. In time, parties associated with the client's original owner sued the attorney and his firm, alleging that they had misrepresented the value of the business in order to acquire the 50% stake at a discount. In addition, the claimants alleged that the attorney used the trust's stake in the business to engage in transactions that benefitted his firm, his family, and himself at the expense of the business. Among other things, the claimants asserted that the law firm and the attorney's family occupied client-owned real estate without paying full rent and that the attorney caused the client to purchase various assets owned by the attorney and his family under unfair terms.

In the coverage litigation that followed the insurer's denial of coverage, the court granted summary judgment in favor of the insurer, holding that the suit did not trigger the duty to defend. The court first determined that coverage was barred by the policy's "Business Enterprise Exclusion," which applied to "any claim ... based on,

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arising out of, directly or indirectly resulting from, in consequence of, or in any way involving ... the Insured's capacity or status as ... an officer, director, partner, trustee, shareholder, manager or employee of a business enterprise." In this regard, the court pointed out that the complaint focused on the attorney's position as a trustee of the trust and member of the law firm when engaging in transactions between the client and those entities. The court also found that the trust's 50% membership stake in the client necessarily involved the attorney's capacity as a "shareholder." Moreover, the court determined that while the claimants' suit was based in part on the attorney's conduct as a lawyer, the "arising out of" and "in any way involving" language in the policy's exclusion was broad enough to bar coverage for the attorney's conduct in a "dual capacity."

Next, the court found that the "Trust Exclusion" applied as well. This provision barred coverage for "any claim ... based on, arising out of, directly or indirectly resulting from, in consequence of, or in any other way involving ... any act whatsoever of an Insured in connection with a trust or estate when an Insured is a beneficiary ... of the trust." The court reasoned that the attorney's conduct was at least in part intended to benefit his family's trust, and it pointed out that the attorney's continued involvement in the management of the client was necessarily in connection with his family's trust since that trust owned a 50% stake in the client. The court also rejected the insureds' argument that the exclusion was too broad to be given effect, concluding instead that "parties are free to contract for broad exclusions resulting in narrow coverage."

Finally, the court found that the allegations by the claimants triggered the policy's "Investment Advice Exclusion." This provision precluded coverage for "any claim ... based on, arising out of, directly or indirectly resulting from, in consequence of, or in any other way involving ... the alleged rendering of investment advice" The court found that a number of the allegations in the underlying complaint involved the attorney's alleged advice for the client to make particular investments. According to the court, the claims based on such purported conduct were "excluded ... by the unambiguous language of the [p]olicy."

The opinion is available [here](#).