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PROFESSIONAL LIABILITY BLOG

Taylor v. Bar Plan (Mo. 2015): A Reminder About the Outer Limits of Professional Liability Insurance

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INTRODUCTION

This past March, the Missouri Supreme Court had occasion to review whether an insurance policy would cover certain malpractice claims against an insured attorney who was found liable for breaching certain fiduciary duties owed to the client. See Taylor v. Bar Plan Mut. Ins. Co., 457 S.W.3d 340 (Mo. banc 2015). Though the Supreme Court's application of basic insurance law principles was not particularly noteworthy—for example, the Supreme Court applied several long-established rules pertaining to the proper interpretation of an exclusionary clause—several observations by the Supreme Court bear mentioning, if only as a poignant reminder. This article synthesizes those observations, reminding both the professional liability insurer and the insured professional of the outer limits of professional liability coverage under Missouri law.

FACTS / PROCEDURAL HISTORY

After his business began suffering financial distress, James Wirken—a prominent Kansas City attorney—decided to seek out several personal loans from an affluent client. Id. at 342-43. The client was a trustee of a revocable trust that Wirken helped form, thereby causing Wirken to have extensive knowledge about the trust's assets. Id. The loans were made and repayment was promised once Wirken successfully settled several contingent cases by year's end. Wirken, however, never told the client that settlement was uncertain at the time the loans were made. Additionally, the client was not told about Wirken's financial distress or the fact that several lending institutions had refused to provide a loan to Wirken. Id. In addition to private loans, Wirken also convinced the client to make several loans to a company called Longview Development Company, and told the client such loans would be a worthwhile business investment. Id. Remarkably, Wirken was even paid a commission for the Longview loans. Id. Neither the private loans nor the Longview loans were repaid. Id.

The trial court—unsurprisingly—found Wirken had breached his fiduciary duty to the client by not fully disclosing his self-interests in the loans as required by Rule 4-1.8(a); the client was awarded nearly $1 million in damages. Id. at 343. Thereafter, the client filed an equitable garnishment action against The Bar Plan Mutual Insurance Company—Wirken's liability insurer— after Wirken failed to pay the judgment. Id. Bar Plan moved for summary judgment, arguing a policy exclusion applied: the "legal representative of investors" clause, which bars coverage to an insured who acts as a legal representative to another investing in the insured's own enterprise. Id. at 344. The trial court agreed, granting summary judgment in Bar Plan's favor; the client appealed. Id.

ANALYSIS OF THE COURT

A. A Professional Liability Policy Is Interpreted as Understood by a Professional, Not a Layperson

The Supreme Court first noted that the Bar Plan Policy was to be interpreted as understood by an attorney, because only an attorney was capable of purchasing a legal malpractice insurance policy. Id. This rule worked against the client, who argued the terms "investor" and "investment" were ambiguous because they had multiple meanings. Id. The Supreme Court explained that the existence of multiple meanings of a word, taken alone, does not render an insurance policy ambiguous. More importantly, the high court found that "the ultimate question is what a reasonable attorney purchasing [the] policy would expect to be covered and excluded from coverage." Id. at 346 (emphasis added). Answering that question, the Supreme Court disposed of the client's argument that the exclusionary clause was ambiguous: "a reasonable attorney would recognize that [the exclusion] is concerned with conflicts of interests when engaging in business transactions with clients." Id.

B. The Concurrent Proximate Causation Rule Does Not Apply Unless the Non-Excluded Cause Is Sufficiently Independent and Distinct from the Excluded Cause.

The Supreme Court then looked at the issue of proximate cause. The client argued his injury was not based solely upon Wirken's role as a legal representative of investors (the threshold condition of the Bar Plan Policy's exclusionary clause), but was also based on Wirken's "general breach of fiduciary duties" in his representation of the client as trustee. Id. at 347. The Supreme Court understood the client's argument to be one of concurrent proximate cause: situations in which an injury was proximately caused by two events. Id. Under Missouri law, when an injury is proximately caused by two events—one excluded, the other not—then coverage exists "if the differing allegations of causation are independent and distinct." Id. (citing Intermed Ins. Co. v. Hill, 367 S.W.3d 84, 88 (Mo. App. S.D. 2012)). The Supreme Court found that the client failed to satisfy the "independent and distinct" requirement, because there was "no readily identifiable independent cause of [client's] injury." Id. at 348. According to the Supreme Court, both "causes" of client's injury related to Wirken's decision to engage in self-interested transactions with the client as trustee, thereby precluding application of the concurrent proximate causation rule. Id.

CONCLUSION

Though the Missouri Supreme Court's analysis in Taylor is not revolutionary in the world of professional liability, it nonetheless serves as a strong reminder about the limitations of a professional liability policy. Such policies are to be interpreted as understood by the professional, not a layperson—a noteworthy departure from typical insurance law. In addition, for coverage purposes, a situation involving a professional playing multiple roles is unlikely to invoke the concurrent causation rule unless the professional was truly acting in an independent capacity separate and apart from his or her role as a professional at the time of the occurrence at issue.

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