

A Law Partner's Alleged Dishonesty, and the Aftermath for Firm Members

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Attorneys and other professionals, while aware of the rules of professional conduct, are also aware not all of their colleagues uphold the trust their clients place in them. Commonly, lawyers form and create partnerships, which present the opportunity for mutual gains but also expose attorneys who uphold the ideals of the profession to the potential failures of others.

In *Great Am. Ins. Co. v. Christy*, a professional liability insurer denied a claim made by an innocent attorney (and staff) because of the allegedly dishonest acts of another partner. The issue in *Christy* was whether a section of the policy protecting innocent insureds also applied to a renewal application, when the allegedly dishonest partner concealed the existence of a pending settlement arising out of dishonest acts.

What Happened

Robert Christy and Thomas Tessier were partners in the firm of Christy & Tessier, P.A., practicing together for more than 45 years. From 2002-05, Tessier allegedly used false affidavits and powers of attorney to gain unauthorized access to some of his clients' assets and accounts for personal use. There was no evidence Christy knew of Tessier's alleged thefts and misappropriations; nonetheless, Christy's actions enabled Tessier to continue his alleged activities. For example, Christy allegedly notarized documents by "witnessing" signatures when the clients were not present. Eventually Tessier's alleged fraud was discovered and he entered into a settlement with the affected clients, agreeing to repay the misappropriated funds. Tessier, however, was unable to make the payments.

The firm's professional liability insurer first issued a policy to the firm in 2001, and issued annual renewals through 2008. To renew the policy, the firm had to complete a renewal application. Two months after Tessier entered into a settlement agreement with a client, Christy completed the renewal application for professional liability coverage. One of the questions on the form asked, "After inquiry, is any lawyer aware of any claim, incident, act, error or omission in the last year that could result in a professional liability claim against any attorney of the Firm or a predecessor firm?" Christy answered, "No." According to Christy, he asked if Tessier had any information that needed to be disclosed and was told there was none.

The firm's professional liability insurer, Great American Insurance Company (GAIC), issued a policy effective August 1, 2007, through August 1, 2008. In January 2008, Christy notified GAIC of Tessier's alleged misappropriations and of Christy's own improper notarization of a document for Tessier in 2003. GAIC responded by filing a petition for declaratory judgment asking that its policy be rescinded and that the court order the firm to reimburse GAIC for any costs, including legal fees, or in the alternative that the court declare and rule that GAIC had no obligation to defend or indemnify Christy.

The Trial Court Rules

Following a hearing, GAIC's request for rescission was granted. The trial court found the misstatements in the application about the knowledge of claims were material to GAIC's decision to insure the firm. Additionally, the court held that even though Christy, who completed the renewal form, had no knowledge of wrongdoing, the application did not pertain solely to Christy's knowledge, but to the knowledge of *any* lawyer in the firm. The Court found that if all the information known by the attorneys were disclosed, the policy would not have been issued.

The New Hampshire Supreme Court Weighs in

The Supreme Court disagreed with the trial court, latching onto language in the innocent insured provision. Under that provision, when a claim has gone unreported in violation of the notice provision due to an insured's concealment of allegedly wrongful acts, GAIC must cover those insureds who did not personally commit or participate in the alleged act, error, or omission.

The Court found an insured that does not have knowledge of the allegedly wrongful acts does not have the ability to report them, and is entitled to coverage if the insurer is promptly notified after the insured learns of the acts. The Court found the innocent insured provision expressly precluded imputing knowledge to those who did not participate in the acts. Though the renewal form required Christy to inquire about any claim against any attorney, the Court found it was not clear that the policy provision concerning an innocent insured's imputed knowledge applied to giving notice on the renewal application. Because the contract was held to be ambiguous, the Court construed the policy against the insurer and found coverage for the firm.

The Take-Away

When entering into partnerships, many professionals focus on the ability to achieve increased financial wealth and status. As *Christy* demonstrates, however, one must also consider the effect an allegedly dishonest colleague may have on the entire partnership.

It is important for all professionals to constantly be aware of potentially suspicious actions taken by colleagues (including fellow partners), even if they seem innocent or routine at the time. Though Christy was successful in this case on appeal, the situation illustrates why attorneys and other professionals must always observe formalities and be wary of those in their offices who fail to do the same.

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