

ALERT

Claim for Negligent Overdraft of Attorney Escrow Account Arises out of Provision of Legal Services

January 30, 2012

Applying New York law, the Supreme Court of the State of New York, County of New York, has held that a suit against an insured law firm involving an overdraft of the firm's escrow account is a claim that "arises out of" the "rendering of professional legal services" and thus triggers the duty to defend under a professional liability policy. *Yudin & Yudin, PLLC, v. Liberty Int'l Underwriters, Inc.*, 2012 NY Slip. Op. 30046(U) (N.Y. Sup. Ct. Jan. 11, 2012).

The insured law firm entered into a retainer agreement with a Korean entity to act as its collection counsel. In the course of that representation, the law firm received a check in the amount of \$489,630 from the client's purported debtor and deposited the check into the firm's escrow account. At the firm's request, its bank wired \$469,315.37 to the client's account at a Korean bank. The debtor's check was later deemed to be fraudulent, resulting in an overdraft in the amount of \$479,325.17. The bank sued the law firm, asserting causes of action for breach of contract, breach of warranty and negligence. The law firm's professional liability carrier denied coverage on the ground that the bank's suit did not "arise out of" the "rendering or failure to render professional legal services" as required by the policy's insuring agreement.

The court disagreed, holding that the issue had been "squarely addressed" by the Third Department of the New York Supreme Court's Appellate Division. See *Lombardi, Walsh, Wakeman, Harrison, Amodeo & Davenport, P.C. v. Am. Guar. & Liability Ins. Co.*, 85 A.D.3d 1291 (N.Y. App. Div. June 2, 2011). Under materially analogous facts, the *Lombardi* court held that because attorneys typically maintain

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accounts with client funds and often transfer funds from such accounts at the request of clients, an attorney performs “legal services” within the meaning of a professional liability policy when he or she deals with the bank that manages its escrow account. The *Lombardi* court further held that an overdraft claim is “based on” and “arises out of” the provision of legal services because those terms, which are “used synonymously in the context of insurance coverage,” require “only that there be some causal relationship between the injury and the risk for which coverage is provided.” Based on this binding precedent, the *Yudin & Yudin* court held that the carrier was obligated to defend its insured in the underlying suit.