Tip of the Month

FEBRUARY 2015

Entering Into a Business Pursuit with a Client May Result in No Coverage for Claims by that Client

Lawyers often find investments in client businesses attractive opportunities for making money. Lawyers need to be careful when investing in clients’ companies however, because malpractice claims arising out of the representation of client in which the attorney (or even the attorney’s spouse) has more than 10% equity position may not be covered under a specific exclusion in the malpractice policy.

Although lawyers’ professional liability policies are intended to respond to liability arising out of the rendition (or failure to render) professional services, most policies contain “business enterprise” exclusions that serve to preclude coverage for liability arising out of, at least in part, the insured’s conduct in other capacities, or where the insured is sued by an entity in which he has a significant ownership or proprietary interest.

Insurers have concluded that, where lawyers are also acting in a corporate capacity, or are advising companies in which they have ownership interests, there is an increased risk of loss. This increased risk is two-fold: 1) Insureds may be tempted to convert business losses into a malpractice claim so that the lawyer and his company can reap the proceeds of the legal malpractice policy; and 2) Insureds acting in this dual capacity lack the appropriate detachment and may suffer from conflicts of interest.