

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ARTHUR ALAN WOLK, et al. : CIVIL ACTION  
: :  
v. : :  
: :  
WESTPORT INSURANCE CORPORATION : No. 06-cv-05346-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

January 29, 2007

Plaintiff, an attorney, is suing his malpractice insurance carrier to recover attorney's fees incurred by plaintiff in defense of claims brought against him which he contends should have been paid by the defendant. This is the second lawsuit brought by plaintiff against the defendant for the same relief; an earlier case was voluntarily withdrawn after the defendant filed preliminary objections.

Plaintiff acted as counsel for plaintiffs in an earlier air-crash lawsuit. The pilot, his wife and his mother were all killed when the plane he was piloting crashed. Plaintiff brought suit against three defendants whose allegedly defective equipment contributed to causing the crash. Midway through a lengthy trial, the case settled, for a total of approximately \$4,666,666. Shortly after the settlement was reached and the trial aborted, however, one of the three defendants sought to void the settlement, because the personal representative who was plaintiff had not disclosed the existence of additional liability insurance covering the pilot. The contention was that, had the complaining

defendant known about this potential additional coverage, its contribution to the settlement would have been much less. It was asserted that the plaintiff had misrepresented or failed to disclose the insurance coverage, and that Mr. Wolk, his attorney, had participated in the coverup. On behalf of his client, Mr. Wolk sought to enforce the settlement. The trial judge agreed with Mr. Wolk and dismissed the challenge to the settlement, but did so without permitting discovery and without holding an evidentiary hearing. On appeal, the decision was reversed and the case remanded for additional discovery and an evidentiary hearing. After further proceedings, the trial court found that neither Mr. Wolk nor his client had knowingly concealed or misrepresented any insurance coverage.

The opinion of the appellate court sending the case back for a hearing was the first indication of a possibility that someone might seek to hold Mr. Wolk responsible for damages of some sort (for his alleged participation in fraudulently inducing the settlement). Mr. Wolk sent a copy of the appellate opinion to the defendant, noting that possibility. The defendant acknowledged receipt of the communication, and it was agreed that Mr. Wolk would keep the defendant advised as the case progressed.

It should be noted that the only "claim" then being asserted was against Mr. Wolk's client, not Mr. Wolk. It should also be noted that the defendant offered to provide counsel for

Mr. Wolk if requested to do so, but Mr. Wolk advised that he would obtain his own counsel for his client and himself.

Mr. Wolk now alleges that, at some point, one of the attorneys involved in the state-court litigation advised that if the ultimate outcome was unfavorable to that attorney's client, he might make a claim against Mr. Wolk personally. Allegedly, Mr. Wolk conveyed that information (orally) to the defendant.

I have concluded that the defendant's motion for summary judgment must be granted. Defendant issued a "claims made" policy. Coverage would be triggered by a "claim" against Mr. Wolk. Intentional misrepresentation or other fraudulent conduct would not be covered. No "claim" has ever been actually made against Mr. Wolk. The most that can be said is that there was notice of a possibility of a claim being asserted later. This does not amount to a "claim." And, in any event, the defendant never received written notice of that purported "claim." Finally, the attorney's fees for which plaintiff seeks reimbursement were incurred on behalf of his client, not on behalf of Mr. Wolk. For all of these reasons, it is apparent that this lawsuit is without merit.

An Order follows.

