

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

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| HOME INSURANCE COMPANY | : | CIVIL ACTION |
| | : | |
| v. | : | |
| | : | |
| GREENFIELD & CHIMICLES, RICHARD | : | |
| GREENFIELD, MARK C. RIFKIN, | : | |
| FPL GROUP, INC., SCOTT R. SHEPHERD | : | |
| and GREENFIELD & RIFKIN, LLP | : | NO. 97-7797 |

MEMORANDUM AND ORDER

Norma L. Shapiro, S.J.

May 5, 1999

Plaintiff Home Insurance Company ("Home Insurance") has filed this action seeking a declaratory judgment that it is not required to defend or indemnify defendants Greenfield & Chimicles ("Greenfield & Chimicles"), Richard Greenfield ("Greenfield"), Mark C. Rifkin ("Rifkin"), and Greenfield & Rifkin, LLP ("Greenfield & Rifkin") against a lawsuit filed by FPL Group, Inc. ("FPL") under the terms of its professional liability insurance coverage.¹ Defendant Greenfield & Rifkin filed a cross-motion for summary judgment. For the reasons set forth below, Home Insurance's motion for summary judgment will be denied; Greenfield & Rifkin will be dismissed and its cross-motion for summary judgment denied as moot.

BACKGROUND

¹Defendant Scott Shepherd was dismissed by agreement of the parties because he did not seek defense or indemnification from Home Insurance. (Order Aug. 11, 1998).

Home Insurance Company is an insurance company in the business of issuing professional liability insurance coverage. (Compl. ¶ 1). Greenfield & Chimicles was a law partnership; Richard Greenfield was formerly a named partner at Greenfield & Chimicles and is currently a named partner at the law partnership of Greenfield & Rifkin with Mark Rifkin, also a former partner at Greenfield & Chimicles. (Id. ¶¶ 2-4). FPL is a public utility holding company based in Florida. (Pl.'s Mot. Summ. J. Ex. D ¶ 1).

On February 6, 1993, Home Insurance issued a professional liability insurance policy to Greenfield & Chimicles extending coverage from February 6, 1993 to February 6, 1994. (Compl. ¶ 10). Greenfield and Rifkin were also named as individual insureds under this policy. (Id.) When the policy terminated on February 6, 1994, Greenfield & Chimicles requested "tail" coverage for all insureds and a "Purchased Optional Extension Period Endorsement" ("Extension Endorsement") was issued. (Id. ¶ 11). The professional liability policy was a claims-made² policy and furnished coverage for Greenfield & Chimicles, Greenfield,

²"Claims made" coverage provides protection only against claims made during the coverage period, here before February 6, 1994, even if the cause for the claim arose before the coverage period. "Claims made" coverage differs from "occurrence" coverage that insures against any claims, whenever made, for liability of the insured during the coverage period. Claims made policies are becoming increasingly the norm. See John C. Williams, Annotation, Lawyer's Professional Liability Insurance, 84 A.L.R.3d 187 (1978).

and Rifkin for:

CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD

(a) by reason of any act, error or omission in professional services rendered or that should have been rendered by the insured or by any person for whose acts, errors or omissions the insured is legally responsible, and arising out of the conduct of the insured's profession as a lawyer or notary public . . .

PROVIDED ALWAYS THAT such act, error or omission or such personal injury happens:

(aa) during the policy period, or

(bb) prior to the policy provided that prior to the effective date of this policy:

1) the Insured did not give notice to any prior insurer of any such act, error omission or personal injury; and

2) the Insured had no basis to believe that the Insured had breached a professional duty or committed a personal injury; and

3) there is no prior policy or policies which provide insurance for such liability or claim, unless the available limits of liability of such prior policy or policies are insufficient to pay any liability or claim in which event this policy will be excess over any such prior coverage.

(Pl.'s Mot. Summ. J. Ex. B at 2). Claims are defined in the policy as "a demand received by the Insured for money or services including the service of suit or institution of arbitration proceedings against the Insured. (Id. at 3). The policy also included an exclusion for:

any judgment or final adjudication based upon or arising out of any dishonest, deliberately fraudulent, criminal, maliciously or deliberately wrongful acts or omissions committed by the Insured. However, notwithstanding the foregoing, the Company will provide a defense for any such claims without any liability on the part of the Company to pay such sums as the Insured shall become legally obligated to pay as damages.

(Id. at 5).

The Extension Endorsement extended coverage to claims first made against the Insured during an unlimited number of calendar months immediately following February 6, 1994, the effective date of cancellation or non-renewal of the policy. (Pl.'s Mot. Summ. J. Ex. C). This Extension Endorsement insured only those "claims which arise by reason of an act, error or omission in professional services performed prior to the effective date of such cancellation or non-renewal of this policy and which is otherwise covered thereunder." (Id.)

On September 5, 1997, FPL filed an action in the United States District Court for the Southern District of Florida against Greenfield, Rifkin, Scott Sheperd, Greenfield & Rifkin, and Greenfield & Chimicles; FPL filed an amended complaint on December 15, 1997. (Pl.'s Mot. Summ. J. Ex. D). FPL's amended complaint stated civil claims under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1964(c) and (d)(civil RICO), and a fraud claim. (Id.) The amended complaint alleged defendants:

have filed or threatened to file literally hundreds of securities or derivative suits against public companies, most of them as purported class actions or other representative actions. In making their demands upon corporations, the Law firm defendants have repeatedly made demands upon corporations such as FPL while fraudulently representing that they represent bona-fide clients. As set forth below, these representations were false and fraudulent because the purported clients did not authorize such action, the

purported client told the Law Firm defendants that he was not their client and the Law Firm defendants were wrongfully purporting to represent him, the purported clients did not in fact exist, or the purported clients were only the alter ego of Attorney Greenfield and/or the Law Firm Defendants.

(Id. ¶ 12). The amended complaint alleged this "occurred over an 11-year period from 1986 and continues at the present time."

(Id.)

When this action was filed, Home Insurance agreed to defend Greenfield & Chimicles, Greenfield, and Rifkin under a full reservation of rights, and refused to defend or indemnify Greenfield & Rifkin.³ (Pl.'s Mot. Summ. J. ¶ 6). Home Insurance filed a motion for summary judgment seeking a declaratory judgment that its professional liability policy and Extension Endorsement did not require that it defend or indemnify any of the defendants named in FPL's amended complaint. Greenfield & Rifkin has filed a cross-motion for summary judgment stating that it never sought coverage under the Home Insurance policy.

DISCUSSION

I. Standard of Review

A court may grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party

³Home Insurance also refused to defend or indemnify Scott Sheperd, but he has already been dismissed from this action.

is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A defendant moving for summary judgment bears the initial burden of demonstrating there are no facts supporting the plaintiff's claim; then the plaintiff must introduce specific, affirmative evidence that there is a genuine issue for trial. See Celotex v. Catrett, 477 U.S. 317, 322-24 (1986). "When a motion for summary judgment is made and supported as provided in [Rule 56], an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in [Rule 56], must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e).

The court must draw all justifiable inferences in the non-movant's favor. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). A genuine issue of material fact exists only when "the evidence is such that a reasonable jury could return a verdict for the non-moving party." Id. at 248. The non-movant must present evidence to establish each element for which it will bear the burden at trial. See Matsushita Elec. Indus. Co. v. Zenith Radio. Corp., 475 U.S. 574, 585-86 (1986).

II. Home Insurance's Motion for Summary Judgment

Home Insurance seeks a declaratory judgment that the terms of the professional liability policy and Extension Endorsement do not require it to defend or indemnify Greenfield & Chimicles,

Greenfield, Rifkin, or Greenfield & Rifkin in the action filed against them by FPL. FPL's claims were not made during the original policy period, but they were made during the Extension Endorsement, extending the policy indefinitely for claims that would have been otherwise covered under the original policy. The Extension Endorsement only covers claims based on acts, errors, or omissions that occurred before the termination of the policy on February 6, 1994.

Home Insurance argues its coverage does not extend to the defense of Greenfield & Chimicles, Greenfield, and Rifkin because no "act, error or omission" underlying the allegations of FPL's amended complaint occurred during the relevant time period. Home Insurance also contends that the allegations of FPL's amended complaint did not result from "an act, error or omission in professional services rendered or that should have been rendered by the insured" or arise "out of the conduct of the insured's profession as a lawyer." Home Insurance further maintains that it is not required to defend or indemnify the Greenfield & Rifkin partnership because it was not an insured under either the policy or the Extension Endorsement. Determination of Home Insurance's duty to defend or indemnify depends on the policy terms with the insureds and the allegations against the insureds.

Under Pennsylvania law⁴ when the facts are not in dispute

⁴The parties agree that this action is governed by Pennsylvania law.

the court interprets an insurance policy as a matter of law. See Pacific Indem. Co. v. Linn, 766 F.2d 754, 760 (3d Cir. 1985). The terms of a policy are construed according to their plain meaning. See Atlantic Mut. Ins. Co. v. Brotech Corp., 857 F. Supp. 423, 427 (E.D. Pa. 1994), aff'd, 60 F.3d 813 (3d Cir. 1995). If the plain meaning is clear, it must be given effect. McMillan v. State Mut. Life Assurance Co. of America, 922 F.2d 1073, 1075 (3d Cir. 1990). If the language is ambiguous, all doubts as to its meaning should be resolved in favor of the insured. St. Paul Fire & Marine Ins. Co. v. Lewis, 935 F.2d 1428, 1431 (3d Cir. 1991); Mohn v. American Cas. Co., 326 A.2d 346, 351 (Pa. 1974). A provision of an insurance policy is ambiguous if, considering it in the context of the entire policy, reasonably intelligent people would honestly differ as to its meaning. Britamco Underwriters, Inc. v. C.J.H., Inc., 845 F. Supp. 1090, 1093 (E.D. Pa.), aff'd, 37 F.3d 1485 (3d Cir. 1994). "The language of the policy may not be tortured ... to create ambiguities where none exist." Pacific Indem. Co., 766 F.2d at 761.

A. Duty to Defend Greenfield & Chemicles, Greenfield, and Rifkin

An insurer has an obligation to defend a lawsuit against an individual "whenever the complaint filed by the injured party may potentially come within the coverage of the policy." Gedeon v. State Farm Mut. Auto. Ins. Co., 188 A.2d 320, 322 (Pa. 1963); see Cadwallader v. New Amsterdam Cas. Co., 152 A.2d 484, 488 (Pa.

1959).

Home Insurance argues that defense of Greenfield & Chimicles, Greenfield, and Rifkin is not required because the allegations of FPL's amended complaint are not based on an "act, error, or omission" that occurred prior to the termination of the original policy period and even if they were, they did not result from "an act, error or omission in professional services rendered or that should have been rendered by the insured" or arise "out of the conduct of the insured's profession as a lawyer."

1. Act, Error or Omission During the Policy Period

Home Insurance's original policy provided coverage for claims made prior to the cancellation or non-renewal of the policy, that is, prior to February 6, 1994. The Extension Endorsement applies to claims made for an unlimited period of time after February 6, 1994, provided that the claims were based on an "act, error, or omission" occurring prior to February 6, 1994.

FPL's complaint alleges a pattern of racketeering and fraudulent activity beginning eleven years ago and continuing to the present. Most of the allegations refer to conduct occurring after February 6, 1994, but several allegations in FPL's complaint refer to acts by the named insureds prior to February 6, 1994. The pattern of racketeering activity alleged is from 1986 to the present, and includes the 1986 registration of an

alter-ego corporation and allegedly fraudulent lawsuits filed in 1990, against Donald Trump, and 1992, against U.S. Healthcare. (Pl.'s Mot. Summ. J. Ex. D ¶¶ 48-50; 41-46; 36-39). Because these actions did not directly implicate FPL, Home Insurance contends that FPL's claims did not arise from an "act, error or omission" occurring prior to February 6, 1994.

FPL does not raise these 1986, 1990, and 1992 acts as personal claims; because it was not directly injured, it would not have standing to assert a civil RICO claim based on those acts alone. See Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 496 (1985). But the 1986, 1990, and 1992 acts allegedly comprise part of an ongoing enterprise of racketeering activity and "[i]n seeking to define the pattern of racketeering, a plaintiff may include whatever acts are parts of the same pattern, even though the plaintiff may only have been injured by one of those acts." Cohen v. Wolgin, 1995 WL 33095, *11 (E.D. Pa. Jan. 24, 1995)(citing Environmental Tectonics v. W.S. Kirkpatrick, Inc., 847 F.2d 1052, 1066 (3d Cir. 1988), aff'd on other grounds, 493 U.S. 400 (1990).

Under RICO, FPL needs to establish a pattern of more than two related and continuing racketeering acts. See H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 239 (1989); Shearin v. E.F. Hutton Group, Inc., 885 F.2d 1162, 1166 (3d Cir. 1989). Although "duration is the sine qua non of continuity," Hindes v.

Castle, 937 F.2d 868, 873 (3d Cir. 1991), other ways to satisfy this requirement include establishing the racketeering activity as a regular way of conducting business, see Tabas v. Tabas, 47 F.3d 1280, 1292-93 (3d Cir.), cert. denied, 515 U.S. 1118 (1995), or "a combination of specific factors such as the number of unlawful acts, the length of time over which the acts were committed, the similarity of the acts, the number of victims, the number of perpetrators, and the character of the unlawful activity." Barticheck v. Fidelity Union Bank/First Nat'l State, 832 F.2d 36, 39 (3d Cir. 1987). FPL must establish ongoing fraudulent activity; allegedly this included the 1986, 1990, and 1992 acts.

Home Insurance's Extension Endorsement covers "claims which arise by reason of an act, error or omission in professional services performed prior to the effective date of such cancellation or non-renewal of this policy and which is otherwise covered thereunder." (Pl.'s Mot. Summ. J. Ex. C). The effective date was February 6, 1994. FPL's lawsuit is covered under this Extension Endorsement because the 1986, 1990 and 1992 acts, integral parts of FPL's RICO claims, occurred prior to February 6, 1994. Because some acts alleged to establish the RICO claims occurred prior to February 6, 1994, Home Insurance must defend the insureds against all claims alleged in FPL's complaint. See Biborosch v. Transamerica Ins. Co., 603 A.2d 1050, 1052 (Pa.

Super. 1992) (citations omitted).

2. Coverage for "Professional Services"

Home Insurance's professional liability policy provides coverage for "an act, error or omission in professional services rendered or that should have been rendered by the insured" and that arise "out of the conduct of the insured's profession as a lawyer." (Pl.'s Mot. Summ. J. Ex. B at 2). The Extension Endorsement is limited to "claims which arise by reason of an act, error or omission in professional services performed prior to the effective date of such cancellation or non-renewal of this policy and which is otherwise covered thereunder." (Pl.'s Mot. Summ. J. Ex. C). Home Insurance, although defending Greenfield & Chimicles, Greenfield, and Rifkin ("the insureds") under a reservation of rights, seeks a declaration that the terms of its policies do not cover the actions alleged in FPL's amended complaint. Home Insurance argues that the alleged practice of filing and threatening to file lawsuits without bona fide clients does not constitute professional services within the meaning of the policy.

The Court of Appeals twice considered the meaning of the term "professional services" in a professional liability policy. In Harad v. Aetna Cas. and Sur. Co., 839 F.2d 979, 985 (3d Cir. 1988), the Court of Appeals held an insurance company was not required to defend an attorney sued for malicious prosecution

because a policy exclusion denied coverage for liability "arising out of the rendering or failure to render any professional service." The claim arose from the attorney's drafting, signing, and filing a complaint and counterclaim for his client; the Harad court held that "these acts are professional in nature and go to the heart of the type of services an attorney provides to his clients." Id. at 984-85.

"In determining whether a particular act is of a professional nature or a 'professional service' we must look not to the title or character of the party performing the act, but to the act itself." Id. at 984 (quotations omitted). Law practices, like many other professional practices, have "two very different and often overlooked components--the professional and the commercial." Id. at 985. Acts arising from a lawyer's commercial activities, that is, those functions necessary in running any business, such as renting office space, are not professional services; when acting in a professional capacity, the lawyer or law firm is rendering, or failing to render, professional services. See id.

The Court of Appeals next examined a professional liability clause in Visiting Nurse Assoc. of Greater Philadelphia v. St. Paul Fire and Marine Ins. Co., 65 F.3d 1097 (3d Cir. 1995). The professional liability policy in Visiting Nurse covered claims "based on events that arise out of the [home care provider]

profession" and "that result from the professional service [the insured] performed or should have performed." Id. at 1100. This policy did not require the insurer to defend or indemnify the insured in an action alleging antitrust and civil RICO claims arising from the insured's alleged practice of illegally paying hospital discharge planners to direct patients to the insured's facility. See id. at 1104. The claims against the insured did not arise from the rendering of discharge planning services because they did not depend "on any aspect of the application of specialized skills, knowledge, learning or attainments by the discharge planners." Id. at 1102. The court held claims that the insured conspired with hospitals to monopolize referrals related to the insured's "effort to operate its business, not from any professional service." Id.

Here, FPL's complaint alleges that the named insureds "filed or threatened to file literally hundreds of securities or derivative suits . . . while fraudulently representing that they represent bona-fide clients." (Pl.'s Mot. Summ. J. Ex. D ¶ 12). Home Insurance argues that the insureds' alleged RICO violations are related to the insureds' management of the partnership business. (Pl.'s Mem. Supp. Mot. Summ. J. at 18-19). But it is the nature of the act giving rise to the liability, not the nature of the claim made, that determines whether a particular act is a professional service. See Harad, 839 F.2d at

984. Preparing and filing lawsuits are professional services for an attorney; they "go to the heart of the type of services an attorney provides to his clients." Harad, 839 F.2d at 984-85.

FPL's amended complaint alleged that the insureds filed or threatened to file lawsuits without proper plaintiffs. If FPL's complaint alleged only that the insureds fraudulently secured clients, that might fall outside the policy's coverage. See Visiting Nurse, 65 F.3d at 1102 (claims that nursing home paid hospitals to monopolize discharge referrals did not arise from professional services). However, filing lawsuits, even if frivolous, fraudulent or improper, "exact[s] the use or application of special learning or attainments of some kind" and is the rendering of professional services. Harad, 839 F.2d at 984 (quotation omitted).

Home Insurance likens this action to Visiting Nurse by arguing that the allegations in FPL's amended complaint do not arise from rendering professional services because the insureds had no real clients. But FPL did not simply allege that the insureds filed suits without clients; its amended complaint also alleged that the insureds did not confirm whether certain clients wished to be represented, did not terminate representation according to clients' wishes, failed to disclose that certain plaintiffs were alter-egos of the insureds, and instituted litigation by clients not competent to authorize the actions.

(Pl.'s Mot. Summ. J. Ex. D ¶¶ 20-61, 77-89). In all these instances, the insureds were rendering professional services, however improvidently.

Other appellate and district court decisions support the conclusion that the insureds' alleged liability arises from rendering professional services. Compare Jensen v. Snellings, 841 F.2d 600, 614 (5th Cir. 1988)(duty to defend claims under federal securities law and civil RICO against tax attorney for allegedly false tax information); Continental Cas. Co. v. Cole, 809 F.2d 891, 896 (D.C. Cir. 1987)(duty to defend law firm against action by attorney for alleged breach of settlement fee agreement); Jefferson-Pilot Fire & Casualty Co. v. Boothe, Prichard & Dudley, 638 F.2d 670, 674 (4th Cir. 1980)(applying Virginia law, insurance company had to defend antitrust claims against insured lawyers arising from tying contracts and price-fixing under a professional liability policy); Home Ins. Co. v. Perlberger, 900 F. Supp. 768, 772 (E.D. Pa. 1995)(duty to defend against claims that lawyer misadvised client to her detriment and for his personal gain); National Union Fire Ins. Co. v. Federal Deposit Ins. Corp., 1991 WL 716787, *6 (N.D. Tex. Jan. 25 1991)(duty to defend against claims that lawyers inadequately supervised assisting lawyers); Sachs v. St. Paul Fire & Marine Ins. Co., 303 F. Supp. 1339, 1341 (D.D.C. 1969)(duty to defend claims that lawyer wrongfully interfered with another's

attorney's retainer contract with a client); with General Accident Ins. Co. v. Namesnik, 790 F.2d 1397, 1399 (9th Cir. 1986)(no duty to defend lawyer against claims that he improperly solicited investment funds for his own corporations); United States Fire Ins. Co. v. Rothenberg, 1998 WL 778354, *13 (E.D. Pa. Sept. 25, 1998)(no duty to defend lawyer against claims that he defrauded clients by sharing cases and listing another lawyer's cases as his own to hide the other attorney's assets); Cohen v. Empire Cas. Co., 771 P.2d 29, 31 (Co. Ct. App. 1989)(no duty to defend lawyer for claims arising from his failure to pay another attorney fees for work performed); Blumberg v. Guarantee Ins. Co., 192 Cal.App.3d 1286, 1293 (Cal. Ct. App. 1987)(no duty to defend attorney for alleged misrepresentation of cases' status when partnership dissolved). Here, the services rendered by the insureds more closely resemble those in the former set of cases; filing lawsuits is inherent to the legal profession.

Home Insurance argues that plaintiff FPL was not a client of defendant insureds. A claim brought by a client is more likely to come within the meaning of "professional services" than a claim brought by a competitor. But this dictum in Visiting Nurse, 65 F.3d at 1103, does not foreclose coverage of a claim by someone other than a client under a professional liability policy; the Court of Appeals expressly rejected that argument when applied to an attorney in Harad. See Harad, 839 F.2d at

983-84 & n.5.

Consideration of Harad and Visiting Nurse compels the conclusion that Home Insurance must defend Greenfield & Chimicles, Greenfield, and Rifkin in the action filed against them in the Southern District of Florida. FPL's amended complaint alleges that these insureds "filed or threatened to file literally hundreds of securities or derivative suits against public companies . . . while fraudulently representing that they represent bona-fide clients." (Pl.'s Mot. Summ. J. Ex. D ¶ 12). These claims were made "by reason of an[] act, error or omission in professional services rendered or that should have been rendered by the insured" and are covered by the Home Insurance policy provided none of the exclusionary provisions apply. (Pl.'s Mot. Summ. J. Ex. B at 5). Home Insurance's summary judgment motion for declaratory judgment that it is not required to defend Greenfield & Chimicles, Greenfield, or Rifkin will be denied.

B. Duty to Indemnify

Denial of Home Insurance's summary judgment motion because it has a duty to defend is without prejudice to a subsequent summary judgment motion regarding Home Insurance's duty to indemnify the insureds if they are found liable in the FPL action.

Home Insurance's policy included an exclusion for "any

judgment or final adjudication based upon or arising out of any dishonest, deliberately fraudulent, criminal, maliciously or deliberately wrongful acts or omissions committed by the Insured.” (Pl.’s Mot. Summ. J. Ex. B at 5). It is possible that this exclusion would deny indemnification by Home Insurance. See Thomas J. Sibley, P.C. v. National Union Fire Ins. Co., 921 F. Supp. 1526, 1532 (E.D. Tex. 1996)(insurance company must defend attorney in civil RICO suit; indemnification left open because of uncertainty whether exclusion for dishonest, fraudulent or malicious acts would apply). Since the action is pending in the Southern District of Florida, determination of Home Insurance’s duty to indemnify is not ripe. See Home Ins. Co. v. Perlberger, 900 F. Supp. 768, 772 (E.D. Pa. 1995); Sibley, 921 F. Supp. at 1532.

C. Duty to Defend or Indemnify Greenfield & Rifkin, LLP

Home Insurance also moves for summary judgment against Greenfield & Rifkin on the ground that the partnership was not a named insured under the policy. Greenfield & Rifkin, in its cross-motion for summary judgment, states it does not seek defense or indemnification from Home Insurance. Greenfield & Rifkin has never asserted coverage by Home Insurance, so there is no actual controversy and no jurisdiction to enter a declaratory judgment. See 28 U.S.C. § 2201. Greenfield & Rifkin will be dismissed and its motion for summary judgment will be denied as

moot. Home Insurance's summary judgment motion also will be denied as moot.

CONCLUSION

Home Insurance provided professional liability coverage to Greenfield & Chimicles, Greenfield, and Rifkin for claims made during the policy period "by reason of an[] act, error or omission in professional services rendered or that should have been rendered by the insured" and "arising out of the conduct of the insured's profession as a lawyer" provided that the act, error or omission "happens . . . during the policy period or prior to the policy period" Home Insurance also provided an Extension Endorsement, on the same terms, for claims made for an unlimited time after the policy terminated on February 6, 1994 so long as the covered conduct occurred before the termination. FPL's action against the insureds, alleging civil RICO and fraud arising from fraudulent securities lawsuits, is covered under the Extension Endorsement of Home Insurance. Some of the acts comprising the RICO claims in FPL's amended complaint occurred before February 6, 1994 and fall within the policy period. Some of the allegations arise from providing lawyers' professional services and are covered under the professional liability policy.

Home Insurance must defend Greenfield & Chimicles, Greenfield, and Rifkin in the pending action against them; indemnification of the insureds for any resulting liability is

not ripe for determination. Home Insurance's motion with regard to these insureds will be denied. Greenfield & Rifkin never sought defense or indemnification from Home Insurance, so Greenfield & Rifkin will be dismissed from this action and its motion for summary judgment will be denied as moot; Home Insurance's motion for summary judgment as to Greenfield & Rifkin also will be denied as moot.

An appropriate order follows.

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

HOME INSURANCE COMPANY : CIVIL ACTION
 :
 v. :
 :
 GREENFIELD & CHIMICLES, RICHARD :
 GREENFIELD, MARK C. RIFKIN, :
 FPL GROUP, INC., SCOTT R. SHEPHERD :
 and GREENFIELD & RIFKIN, LLP : NO. 97-7797

ORDER

AND NOW this 5th day of May, 1999, upon consideration of plaintiff Home Insurance's motion for summary judgment, defendants' response in opposition, Home Insurance's reply, defendants' surreply, defendant Greenfield & Rifkin's cross-motion for summary judgment and Home Insurance's response in opposition, it is **ORDERED** that:

1. Greenfield & Rifkin is dismissed for lack of jurisdiction.

2. Home Insurance's motion for summary judgment as to defendants Greenfield & Chimicles, Richard Greenfield, and Mark Rifkin is **DENIED**. Home Insurance must defend these defendants in the action filed against them by FPL Group, Inc. in the Southern District of Florida.

3. Home Insurance's motion for summary judgment as to defendant Greenfield & Rifkin, LLP is **DENIED AS MOOT**.

4. Defendant Greenfield & Rifkin's motion for summary judgment is **DENIED AS MOOT**.

5. The caption is **AMENDED** as follows:

HOME INSURANCE COMPANY : CIVIL ACTION
 :

v. :
:
GREENFIELD & CHIMICLES, RICHARD :
GREENFIELD, MARK C. RIFKIN, :
and FPL GROUP, INC., : NO. 97-7797

Norma L. Shapiro, S.J.