

NJ Law Firm Can't Revive Insurance Suit Over Stolen Funds

By **Daphne Zhang**

Law360 (June 9, 2021, 4:27 PM EDT) -- A New Jersey state appeals court on Wednesday refused to revive Cadre Law Firm LLC's suit seeking insurance coverage for \$800,000 in client funds misappropriated by a former paralegal, saying the policy does not cover the firm's damages.

Judge Carmen Messano upheld a lower court's ruling, saying the law firm and its owner, Jill Cadre, cannot get coverage under their \$1 million LawyerCare professional liability policy with ProAssurance Casualty Company.

The firm has said that the insurance covers breach of a fiduciary obligation that results in the misappropriation of client funds. Because New Jersey rules require limited liability companies to obtain professional liability insurance, carriers offering the specific type of insurance are not allowed to deny coverage for damages arising from lawyers' professional services, Cadre said.

"The Rule regulates the conduct of attorneys, not insurers," Judge Messano said.

The state rules specify that employees of the LLC are liable for their own professional misconduct, and ProAssurance never asserted that its policy provides the exact type of coverage that the state requires LLC law firms to purchase, the judge said.

The suit stems from Cadre's hiring of Miguel Mayorga in 2009. The Supreme Court of New Jersey's Office of Attorney Ethics informed her in February 2015 that the firm's attorney trust account would be audited, according to the court records. The office also asked the firm to provide a certificate of insurance as required by New Jersey rules which dictated that law firms operating a limited liability company must procure professional liability insurance that covers the firm's professional services.

While preparing for the audit, Cadre discovered that Mayorga had embezzled funds from the account. She reported the theft to the Bergen County Prosecutor's Office, but Mayorga left for Ecuador, according to court files. Mayorga made off with \$783,809.97 from the account, according to court documents.

Cadre sought coverage from ProAssurance in June 2015, but the insurer rejected her claims. The attorney then filed a declaratory judgment suit, which was removed to federal court in January 2016. In July that year, New Jersey federal court rejected a bid by Cadre for a quick win, rebuffing claims that the ProAssurance professional liability policy should apply.

After the district court's ruling, Cadre added insurance broker All Point Insurance Agency to the case, defeating the federal court's diversity jurisdiction. The case was subsequently remanded to state court. After the state court ruled against the firm, Cadre appealed.

Cadre has argued that the state rule that requires LLC law firms to get malpractice insurance binds not just firms but also the insurers that provide the coverage. To the extent that the ProAssurance policy doesn't provide enough coverage to meet her needs, it violates the rule and should be voided or altered, the attorney said.

The lawyer has argued that ProAssurance negligently represented the policy and should have been aware of the specific insurance requirement for LLC firms before issuing the policy. Yet Judge Messano rebuffed her contention on Wednesday, saying the Cadre has acknowledged she herself was not aware of the rule until the Office of Attorney Ethics informed her in 2015.

"Who is charged with a greater knowledge of our Rules of Court ... than a licensed attorney?" the judge asked.

The policy offers "no coverage whatsoever for damage claims arising from the misappropriation of clients' trust funds," Judge Messano said on Wednesday, and the insurance "did not provide coverage to meet the requirements of the rule."

Cadre has also contended that the policy's definition of "damages" was ambiguous and that the policy failed to meet the "reasonable expectations" of its insureds, saying that ProAssurance negligently misrepresented that the policy complied with the state rule.

"There is nothing ambiguous about the limitation on coverage provided by the policy. Defendant limited the insuring agreement by clearly excluding any obligation to pay a certain type of damage claim ... seeking the 'return or restitution' of 'any allegedly misappropriated client funds,'" the judge said.

Representatives for the parties could not be immediately reached for comment.

Cadre is represented by Francis X. Garrity of Garrity, Graham, Murphy, Garofalo & Flinn, PC.

The insurer is represented by Suzanne C. Midlige of Coughlin Midlige & Garland LLP.

The suit is Cadre et al. v. ProAssurance Casualty Co., docket number A-4969-18, in the Superior Court of New Jersey Appellate Division.

--Editing by Peter Rozovsky.