

11th Circ. Says Insurer Must Defend Atty Malpractice Suit

By **Ganesh Setty**

Law360 (October 10, 2025, 7:27 PM EDT) -- A law firm's professional liability insurer has a duty to defend it and one of its attorneys in an underlying malpractice lawsuit stemming from their representation of defendants that faced civil forfeiture claims, the Eleventh Circuit ruled Friday, finding that a "misappropriation exclusion" did not wholly foreclose coverage.

Affirming the dismissal of Medmarc Casualty Insurance Co.'s declaratory action, a **unanimous three-judge panel** specifically pointed to underlying malpractice claims against the insureds, Fellows LaBriola LLP and attorney Steven Kushner, relating to their alleged failure to recognize potential conflicts of interest in jointly representing their clients.

Such alleged failures "have nothing to do with misappropriation, conversion, or improper commingling and, thus, fall outside the misappropriation exclusion," the panel found in its unpublished decision, further rejecting the insurer's broad reading of the phrase "relating to" in the exclusion.

"We must not read phrases like 'relate to' so that they 'extend to the furthest stretch of [their] indeterminacy, ... for really, universally, relations stop nowhere,'" the panel said, quoting from the U.S. Supreme Court's 1995 decision in *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Insurance Co.* 

"We make no holding with regard to where that line ultimately lies, but it surely cannot be where claims simply involve the same parties and are brought in the same lawsuit," the panel noted.

And because the underlying malpractice litigation is not yet resolved, Medmarc's indemnification obligations are not yet ripe for review, the panel further affirmed.

According to court filings, the coverage litigation stems from a July 2019 action that the state of Georgia filed against Zankhana Patel, her company PNP Amusement Games LLC, her then-spouse Manoj Patel, his own company Krishna Amusement Inc. and others. Seeking civil forfeiture under the Racketeer Influenced and Corrupt Organizations Act, the state alleged the defendants unlawfully engaged in commercial gambling, asserting claims involving licenses for "coin operated amusement machines."

That underlying RICO action was settled in January 2020 and further required a receiver to distribute cash from defendant companies' bank accounts and an auction of some assets. Patel and PNP filed their malpractice suit against Fellows and Kushner in state court in May 2024, alleging they wired proceeds from the auction to the Krishna account without authorization from Zankhana or PNP, including after Manoj filed for divorce.

"Neither Zankhana nor PNP received any funds from the receiver or proceeds from the auction," Friday's decision said, adding that as part of the underlying RICO case, the defendants executed a single fee agreement. Fellows and Kushner agreed to represent the Patels, PNP and Krishna in the RICO case "without initially recognizing the potential conflicts among the clients," Zankhana and PNP further alleged, saying they also failed to "advise the clients of those potential conflicts."

Medmarc, meanwhile, also filed its declaratory action in May 2024 in Georgia federal court, arguing the misappropriation exclusion completely barred coverage for the malpractice action. It specifically

stated in part that the policy did not apply to "any claims ... involving or relating to any conversion, improper commingling, or misappropriation, whether by an insured or any other person."

The district court granted Fellows' and Kushner's dismissal motion in February 2025.

On Friday, the panel further addressed Medmarc's argument that the underlying malpractice lawsuit constituted one claim under the policy that fell under the misappropriation exclusion, pointing to a provision deeming all claims involving a series of related acts as one claim made when the first of such claims is made.

But Medmarc did not raise that particular argument before the district court, the panel found, adding that even if it did, the argument was "unpersuasive" nonetheless.

That provision is located in the policy's "when a claim is made" section, the panel continued, saying an insured "would expect that the sentence in question impacts only when a claim is first made and would not expect it to inform the meaning of 'claim' beyond that."

"There are multiple claims in this suit," the panel further held, ultimately determining the underlying conflict-of-interest claims fell outside the misappropriation exclusion, thus triggering Medmarc's duty to defend.

Linley Jones, an attorney representing PNP, told Law360 in a statement that "PNP Amusement Games is pleased with the 11th Circuit's decision today to uphold an insurance company's duty to defend its insured lawyer."

"We look forward to the jury trial in the state court case," she said.

Representatives of the other parties did not immediately respond to a request for comment.

U.S. Circuit Judges Robin S. Rosenbaum, Kevin C. Newsom and Gerald Bard Tjoflat sat on the panel.

Medmarc is represented by Kim Monroe Jackson and W. Randal Bryant of Bovis Kyle Burch & Medlin LLC.

Fellows LaBriola LLP and Kushner are represented by Jonathan Palmer of Knight Palmer LLC.

Zankhana Patel and PNP Amusement Games are represented by Michael J. Warshauer of Warshauer Woodward Atkins and by Linley Jones of The Linley Jones Firm PC.

The case is Medmarc Casualty Insurance Co. v. Fellows LaBriola LLP et al., case number 25-10837, in the U.S. Court of Appeals for the Eleventh Circuit.

--Editing by Nick Petruncio.