

Miami Law Firm Not Covered In Overbilling Row, Judge Says

By **Jennifer Mandato**

Law360 (February 14, 2024, 3:43 PM EST) -- An insurer does not have to defend a Miami law firm in a lawsuit accusing it of overbilling a client, a Florida federal judge has ruled, finding that the underlying allegations do not constitute professional services as defined by the firm's policy.



A Miami law firm's insurer escaped covering a lawsuit alleging the firm overbilled a client. (Photo by AaronP/Bauer-Griffin/GC Images)

U.S. District Judge Wendy W. Berger **granted** James River Insurance Co.'s motion for final summary judgment Monday, determining that Sheehe & Associates PA is not owed coverage for the underlying suit.

The court concluded that the underlying claims arose from the firm's allegedly fraudulent billing practices, but that billing practices — "legitimate or otherwise" — are not professional services in the context of legal practice.

According to court filings, James River issued a professional liability policy to Sheehe running from March 2020 to March 2021 that broadly provided coverage for wrongful acts in the performance or failure to perform "professional services." The policy defined that term in part as services performed by an insured as a lawyer, arbitrator or trustee, along with other fiduciary roles performed in one's capacity as a lawyer.

The dispute arose after First Protective Insurance Co., or Frontline, accused Sheehe and select attorneys

of overbilling hours worked in state court in October 2020.

Frontline retained the firm as panel counsel from 2009 until 2020 to represent it primarily in first-party property claims, but argued that Sheehe conducted fraudulent billing practices, including billing for time not actually worked, excessive billing for various repetitive tasks, and billing for administrative matters for which no time should have been charged, according to the order.

In one example, Frontline alleged that on nearly 500 occasions in 2019, multiple Sheehe attorneys individually billed it for more than 24 hours for a single day.

James River provided Sheehe with a defense but sued it in March 2022, maintaining that the **allegations in the underlying suit** didn't fall under the policy's definition of professional services and that a slew of exclusions also barred coverage.

In February 2023, Judge Berger trimmed James River's suit, finding that a ruling on the insurer's duty to indemnify was unripe and that the court could only resolve the duty to defend issue at the summary judgment stage.

While Sheehe contended that the breach of fiduciary duty and breach of oral contract claims in the underlying suit were "sound in substantive legal malpractice," Judge Berger held that the details of the underlying complaint didn't support this argument.

When determining whether a particular act qualifies as a professional service, Florida courts consider multiple facts, including whether the service involves a specialized skill or specialized training or requires a degree, the order said.

Instead, the claims in the underlying complaint are general allegations that the firm unnecessarily billed Frontline, "which naturally would run contrary to Frontline's interests," Judge Berger said.

The services performed by Sheehe do not meet the state's threshold for determining a professional service, according to the order.

Representatives for James River and for Sheehe did not immediately respond to requests for comment Wednesday.

James River is represented by Eric A. Hiller and Junaid N. Savani of Kennedys CMK.

Sheehe and the other defendant attorneys are represented by Brenton N. Ver Ploeg and Lindsay R. Abbondandolo of Ver Ploeg & Marino PA.

The case is James River Insurance Co. v. Sheehe & Associates PA et al., case number 6:22-cv-00613, in the U.S. District Court for the Middle District of Florida.

--Additional reporting by Ganesh Setty. Editing by Adam LoBelia.