

July 28, 2021

Traub Lieberman Team Obtains Motion to Dismiss on Duty to Defend

Related Attorneys: Brian C. Bassett, Michael K. Kiernan, Anthony Hatzilabrou

On July 26, 2021, Traub Lieberman Partners Brian Bassett and Michael Kiernan obtained a motion to dismiss with prejudice in favor of the Defendant Insurer in a case filed in the U.S. District Court, Southern District of Florida. The Plaintiff, a Florida-based law firm (the "Law Firm"), was named as a defendant in a lawsuit claiming negligence, legal malpractice, breach of fiduciary duty, and negligent hiring following a hacking and fraudulent wiring incident that resulted in loss of funds for a client of the Law Firm. The Law Firm sought insurance coverage under a professional liability policy issued by the Insurer in 2017. The policy contains a "theft exclusion" that precludes coverage for claims based on or arising out of theft by any person of any kind of assets. The Insurer denied coverage to the Law Firm, citing the theft exclusion of the policy. As a result, the Law Firm brought action against the Insurer for declaratory relief and breach of contract.

In review of the facts of the case, the Court found that the underlying claim against the Law Firm clearly arose from circumstances in which the theft exclusion of the policy precluded coverage. As a result, the court found that the Insurer owed no duty to defend and the Insurer's motion to dismiss was granted and the complaint dismissed without prejudice.