

ACI's Advanced Forum on LPL/Legal Malpractice

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Coverage Implications for Non-Client Litigation

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Tweeting about this conference?

#ACIMalpractice



Once Upon a Time...

- The concept of privity provided:
 - Lawyers with relative security in identifying the object of their duty.
 - Underwriters with a fairly defined world of exposures to consider in setting premium.
 - Claims groups with some certainty in evaluating actual damages.



...and the World was Simple...

- Claims against lawyers were called simply “legal malpractice”:
 - Duty, arising from the attorney-client relationship;
 - Breach of the Standard of Care;
 - Proximate Cause; *and*
 - Actual Damages.



But Alas...

- Privity is Dead or Dying
 - Intended Beneficiaries
 - Non-Beneficiary Strangers to the Attorney-Client Relationship



...and the World is Now Muddled

- Strangers are Plaintiffs
 - “Duty” takes on a broader but less defined meaning.
- Causes of Action are Stranger
 - “Damages” leaves the “Actual” behind, allowing for punitive, reputational and other non-economic recovery.



And so Here We Are

- Who are these strange plaintiffs?
- What kinds of claims are they bringing?
- How does defense counsel evaluate and defend them?
- What coverage implications come with them?



The Non-Client Plaintiff

- Former Adversaries
- Investors
- Receivers, Trustees & Conservators
- Government Agencies & Regulators



The Not-Legal-Malpractice Claim

- Conspiracy and Aiding & Abetting
- Fraud
- Malicious Prosecution/Abuse of Process
- Defamation, False Light and Intentional Infliction
- Civil Rights (Sec. 1983)
- Tortious Interference



Defending Against the Stranger

- Merits aside:
 - Litigation Privilege
 - Unclean Hands/*In Pari Delicto*
 - Anti-SLAPP
 - Superior Duty
 - “Special Damages”



But Are These Claims Covered?

- Within Scope of Professional Services
- Intentional Acts
- Knowledge of Insured
- Final Adjudication Issues

