

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

LESLIE CERRATO f/k/a	:	
LESLIE FIRTH,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CASE NO. 3:99CV2355 (RNC)
	:	
	:	
AMERICAN HOME INSURANCE	:	
COMPANY,	:	
	:	
Defendant.	:	

RULING AND ORDER

The issue at the heart of this diversity case is whether a lawyer's professional liability insurance policy issued by defendant American Home Insurance Company provides coverage for claims brought by plaintiff Leslie Cerrato against her former attorney, Milo Altschuler, in Connecticut Superior Court in 1993. The claims arose out of a sexual assault that occurred while Cerrato and Altschuler were meeting privately in connection with a criminal case against Cerrato scheduled to go to trial the next day. Cerrato's Superior Court complaint alleged that Altschuler, under the guise of preparing her to testify, took her across his lap, lifted her skirt and spanked her. The complaint claimed that the assault was due to Altschuler's negligence in that he failed to seek psychiatric help or counseling before the incident, failed to restrain himself from inappropriate contact,

tried to intimidate Cerrato through physical contact into following his advice as her attorney, and failed to acknowledge his conduct was wrongful. American Home declined to provide coverage on the ground that the acts alleged in the complaint did not constitute the rendering of professional services within the meaning of the policy. Cerrato and Altschuler eventually agreed to settle the case in 1999 based on a stipulated judgment in the amount of \$250,000, which Cerrato now seeks to collect from American Home. Both sides have moved for summary judgment. I conclude that the policy does not provide coverage.

#### DISCUSSION

American Home's policy provided coverage for "all sums which the insured shall become legally obligated to pay as damages because of any claim . . . arising out of any act, error or omission of the insured in rendering or failing to render professional services for others in the insured's capacity as a lawyer . . . ." (Letter dated Dec. 6, 1993, Pl. Ex. B). This language is to be given its natural, ordinary meaning in order to give effect to the apparent intent of the parties to the insurance contract.

The natural meaning of "professional services" includes preparing clients for testifying in court. However, it does not include assaulting a client in the guise of preparing her to testify.

Plaintiff relies on St. Paul Fire and Marine Insurance

Company v. Shernow, 222 Conn. 823 (1992). The issue in that case was whether a dentist's liability insurance policy provided coverage for claims arising from a dentist's mistreatment of a patient, who visited the dentist to get a filling for a tooth. The dentist administered excessive amounts of nitrous oxide to the patient in violation of the standard of care. He then sexually assaulted the patient while she was under the effects of the anesthesia. When the patient showed signs of regaining consciousness, the dentist gave her more nitrous oxide and continued the assault. The patient sought damages for permanent injuries resulting from the dentist's administration of the anesthesia, consisting of a permanent asthma condition and permanent loss of 35 to 40 per cent of her lung capacity, as well as for injuries arising from the assault. The Court determined that the policy provided coverage for the sexual assault claim because the dentist's breach of the standard of care with regard to the anesthesia was "inextricably intertwined and inseparable from the intentional conduct that serve[d] as the basis for the separate claim of a sexual assault." Id., at 830.

Plaintiff urges that the "inextricably intertwined and inseparable" standard is met in the present case because Altschuler spanked her in connection with preparing her to testify. I disagree. In Shernow, the patient's claim for damages arising from the dentist's administration of nitrous oxide was clearly covered by the policy. The Court determined

that the policy also provided coverage for the sexual assault claim because the dentist's administration of nitrous oxide and his sexual assault were truly intertwined and inseparable. The Court's belief that the two were very closely linked was consistent with the facts of the case. The dentist administered an excessive amount of nitrous oxide to the patient then began to assault her. When she showed signs of regaining consciousness, he administered more nitrous oxide in violation of the standard of care, not once, but twice, so the assault could continue. Were it not for the dentist's violation of the standard of care governing use of anesthesia, the assault could not have proceeded as it did. Moreover, were it not for the assault, the second and third doses of nitrous oxide would not have been administered.

The situation here is fundamentally different. Unlike the patient's complaint against the dentist in Shernow, which plainly alleged a dental malpractice claim for wrongful administration of anesthesia and pleaded a separate claim for sexual assault, Cerrato's complaint against Altschuler did not assert a claim for legal malpractice. The complaint did not allege that Altschuler breached his duty to properly prepare her to testify and in doing so caused her to suffer some harm. Rather, she sought to recover emotional distress damages caused by the sexual assault itself without linking the assault claim to a claim covered by the policy. Nothing in Shernow suggests that the Court would have found coverage if the dentist, before administering nitrous oxide

to the patient, went right ahead and assaulted her and the patient sued for the assault alone.

Plaintiff contends that, in any event, defendant had a duty to defend Altschuler. An insurer's duty to defend is broader than its duty to indemnify. Springdale Donuts, Inc. v. Aetna Casualty & Surety Co. of Illinois, 247 Conn. 801, 807 (1999). The duty to defend "does not depend on whether the injured party will successfully maintain a cause of action against the insured but on whether he has, in his complaint, stated facts which bring the injury within the coverage." Id. "It necessarily follows that the insurer's duty to defend is measured by the allegations of the complaint." Id.

Cerrato's complaint alleged that Altschuler was careless and negligent in various ways listed above. However, the complaint did not plead a claim covered by the policy. Rather, it alleged conduct clearly constituting an intentional assault. According to the complaint, "[Altschuler] suddenly took the Plaintiff across his lap, removed the Plaintiff's skirt and struck her several times." I therefore conclude that defendant did not owe Altschuler a defense under the policy.

Because American Home has prevailed on the coverage issues addressed above, it is unnecessary to address any of the other defenses to coverage raised by the Company. Moreover, my conclusion that the Company was not obligated to indemnify or defend Altschuler makes it unnecessary to address plaintiff's

remaining claims.

Conclusion

Accordingly, defendant's motion for summary judgment is granted and plaintiff's motion for summary judgment is denied. The Clerk may close the file.

It is so ordered this 2<sup>nd</sup> day of April, 2001

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Robert N. Chatigny  
United States District Judge