



The Fraudulent Transfer Case




Fast forward four years. . .

- PDQ obtains a \$1 million judgment against Clark after a week-long arbitration
- PDQ files a fraudulent transfer /unfair and deceptive trade practices suit against LMNC




<div style="display: flex; align-items: center; margin-bottom: 10px;"> <div style="width: 15px; height: 15px; background-color: #2e7d32; border-radius: 50%; margin-right: 5px;"></div> <div style="width: 15px; height: 15px; background-color: #4db6ac; border-radius: 50%; margin-right: 5px;"></div> <div style="width: 15px; height: 15px; background-color: #bdbdbd; border-radius: 50%; margin-right: 5px;"></div> <div style="border-left: 1px solid black; height: 50px; margin-left: 5px;"></div> </div>	<div style="display: flex; justify-content: space-between;"> <div> <p>STATE OF NORTH CAROLINA COUNTY OF WAKE</p> <p>Plaintiff,</p> <p>v.</p> <p>LAWYERS MUTUAL LIABILITY INSURANCE COMPANY OF NORTH CAROLINA and</p> <p>Defendants.</p> </div> <div style="text-align: center;"> <p>IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 08 CV 007293</p> <p>FILED 2008 MAY 15 PM 4:02 WAKE COUNTY, NC</p> <p>COMPLAINT (JURY TRIAL DEMANDED)</p> </div> </div> <p>Plaintiff, complaining of the Defendants, alleges and says:</p> <p style="text-align: center;">PARTIES AND JURISDICTION</p> <ol style="list-style-type: none"> Plaintiff is a Texas limited partnership. Upon information and belief, Defendant Lawyers Mutual Liability Insurance Company of North Carolina ("Lawyers Mutual") is an insurance company formed under the law of North Carolina which has its registered office in Wake County, North Carolina. Upon information and belief, Defendant is a citizen and resident of Wake County, North Carolina and, during the times relevant to this action, was an attorney licensed to practice in North Carolina. This Court has personal jurisdiction over Defendants Lawyers Mutual and since, without limitation, Defendants have had and continue to have systematic and continuous contacts with the State of North Carolina. Venue is proper in Wake County because at least one of the defendants resides here. <div style="text-align: right; margin-top: 20px;"> <p>Yates, McLamb & Weyher, L.L.P.</p> </div>
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<p>in rendering or failing to render legal or fiduciary services for others while engaged in the practice of law as licensed by the State of North Carolina.</p> <p>56. is entitled to recover, and Lawyers Mutual is obligated to pay policy benefits for the full sum awarded to under the Judgment against as well as such other costs awarded by this Court.</p> <p style="text-align: center;">COUNT IV—FRAUDULENT TRANSFER (Against & Lawyers Mutual)</p> <p>57. incorporates by reference the allegations of Complaint.</p> <p>58. Additionally, or in the alternative, the agreement embodied in the Settlement Agreement and Consent Judgment is a fraudulent transfer.</p> <p>59. is a creditor's of owes the full amount awarded under the Judgment.</p> <p>60. claim against arose either before or after the date perfected by the Settlement Agreement and Consent Judgment.</p> <p>61. Lawyers Mutual and made the Transfer with intent to hinder, delay and/or defraud creditors. Specifically, Lawyers Mutual intended to hinder, delay and/or defraud ability to recover damages in suit against and to discourage or dissuade from pursuing its claims against</p> <p>62. Additionally, or in the alternative, made the Transfer without receiving reasonably equivalent value from Lawyers Mutual in exchange for the Transfer.</p>	<p>61. Lawyers Mutual and made the Transfer with intent to hinder, delay and/or defraud Wood's. Specifically, Lawyers Mutual intended to hinder, delay and/or defraud WHD's ability to</p> <div style="text-align: right; margin-top: 20px;"> <p>Yates, McLamb & Weyher, L.L.P.</p> </div>
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And you're ugly too . . .



73. Lawyers Mutual's unfair or deceptive acts or practices have proximately caused injury to [REDACTED]

74. Lawyers Mutual's acts or practices offend established public policy; are immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers; and/or manifest an inequitable assertion of power or position.

75. Additionally, by entering into the Settlement Agreement with [REDACTED] and/or by failing to satisfy the Judgment following acts or practices proscribed by N.C.G.S. § 75-16 and, if Lawyers Mutual does not promptly satisfy the Judgment [REDACTED] has obtained against its insured [REDACTED] [REDACTED] is entitled to recover its reasonable attorneys fees under N.C.G.S. § 75-16.1 due to Lawyer's Mutual willful acts and its unwarranted refusal to fully resolve the matter which constitutes the basis of this suit.


76. As a proximate cause of Lawyers Mutual's unfair acts or practices, [REDACTED] has been unable to date to recover the damages and costs of this suit.

77. Because of Lawyers Mutual's unfair acts or practices, [REDACTED] is entitled to recover treble the damages proximately caused it as a result of the violation of the Act under N.C.G.S. § 75-16 and, if Lawyers Mutual does not promptly satisfy the Judgment [REDACTED] has obtained against its insured [REDACTED] [REDACTED] is entitled to recover its reasonable attorneys fees under N.C.G.S. § 75-16.1 due to Lawyer's Mutual willful acts and its unwarranted refusal to fully resolve the matter which constitutes the basis of this suit.

**COUNT VI—TORTIOUS BREACH OF CONTRACT
(Against Lawyers Mutual)**

78. [REDACTED] incorporates by reference the allegations of the foregoing paragraphs of the Complaint.

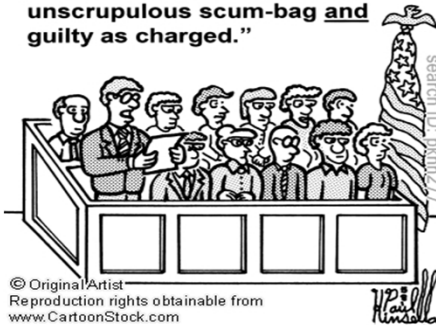
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Unscrupulous?

"We, the jury, find the defendant to be a brutal, morally bereft, unscrupulous scum-bag and guilty as charged."



What is a fraudulent transfer?

A transfer of a debtor's property made with intent to defraud or for which the debtor receives less than the transferred property's value.

Twyne's Case circa 1583



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Fraudulent Transfer

PDQ claimed that through the “Clark Agreement” with LMNC, Clark fraudulently transferred his insurance coverage (and his only recoverable asset) with the intent to make it unavailable to PDQ and thereby defraud PDQ.

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Weyher, L.L.P.

“Special Handling”



- Our firm reported (i) to Warren Savage (claims counsel who was not involved in earlier litigation) and (ii) to an hoc claims committee consisting of two newer committee members who were not at LMNC at the time of the earlier litigation with Clark
- Will Graebe and all other claims committee members were screened from case

 Yates,
McLamb &
Weyher, LLP

FILED

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NORTH CAROLINA
WAKE COUNTY

[REDACTED]
Plaintiff,

vs.

LAWYERS MUTUAL LIABILITY
INSURANCE COMPANY OF NORTH
CAROLINA and [REDACTED]
Defendants.

WAKE COUNTY, N.C.
BY _____)
) IN THE GENERAL COURT OF JUSTICE
) SUPERIOR COURT DIVISION
) FILE NO. 08-CVS-7293
)
) MOTION FOR SUMMARY
) JUDGMENT OF LAWYERS MUTUAL
) LIABILITY INSURANCE COMPANY
) OF NORTH CAROLINA
)
) [MOT:SJ]

Defendant, LAWYERS MUTUAL LIABILITY INSURANCE COMPANY OF NORTH CAROLINA ("Lawyers Mutual"), pursuant to Rule 56 of the North Carolina Rules of Civil Procedure, hereby moves for summary judgment on the grounds that the pleadings and the affidavit and certified transcripts filed herewith show that there is no genuine issue as to any material fact with regard to the specific defenses set forth below, and that Lawyers Mutual is entitled to judgment as a matter of law.

A. On April 6, 2001, Plaintiff [REDACTED] filed a civil action in Harris County, Texas against [REDACTED] and [REDACTED] and other defendants, captioned [REDACTED]. A copy of the Complaint in the [REDACTED] Texas Action is attached to the Affidavit of William Graebe, as Exhibit B. The [REDACTED] Texas Action arose out of [REDACTED] loss from its investment in a venture capital fund, [REDACTED]. For a period of time, [REDACTED] had an ownership interest in Fund III and served as a fund manager and counsel. The [REDACTED] Texas Action was ultimately dismissed on jurisdictional grounds.

 Yates,
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Weyher, LLP

Grounds for Summary Judgment

1. “Clark Agreement,” which was reduced to a consent judgment, bars PDQ’s claims

2. PDQ not party to policy - no standing

3. Clark’s late notice

4. Judgment not within insuring clause

5. Officer/manager exclusion

6. Collateral estoppel

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McLamb &
Weyher, L.L.P.

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Plaintiff,

v.

LAWYERS MUTUAL LIABILITY
INSURANCE COMPANY OF NORTH
CAROLINA and

Defendants.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
08 CVS 7293

FIRST SET OF
INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF
DOCUMENTS TO LAWYERS
MUTUAL LIABILITY INSURANCE
COMPANY OF NORTH CAROLINA

TO: Defendant Lawyers Mutual Liability Company of North Carolina, by and through its attorneys of record, Dan J. McLamb and Barbara B. Weyher, P.O. Box 2889, Raleigh, North Carolina 27602.

Some terms in these Interrogatories and Requests for Production of Documents (collectively, “Discovery Requests”) are used with specific meanings and instructions. These terms are defined in the Definitions section below and the instructions are set forth in the General Instructions section below.

DEFINITIONS

As used herein, the terms listed below are defined as follows:

1. “You,” “Your,” or “Lawyers Mutual” means Defendant Lawyers Mutual Liability Insurance Company of North Carolina, as well as the Lawyers Mutual Liability Insurance Company of North Carolina’s corporate affiliates, divisions, subgroups, subsidiaries, parent corporations, predecessors, successors, assignees, agents, legal representatives, trustees, consultants, and all representatives and other persons acting on its behalf, and its present and former officers, directors, and employees.


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Yates,
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Weyher, L.L.P.

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<p>Interrogatory No. 9:</p> <p>Identify all other unprivileged communications between Lawyers Mutual and any other persons concerning the subject matter of this action.</p> <p>Answer:</p>	
<p>DOCUMENT REQUEST</p> <p>In accordance with Rule 34 of the North Carolina Rule for inspection and copying at the office of Brooks, Pierce, McL...</p> <p>150 Fayetteville Street Mall, Suite 1600, Raleigh, North Carol...</p> <p>service of this request or, if applicable, at such earlier time and the following documents:</p> <p>Request for Production No. 1:</p> <p>Produce a true and complete copy of the Insurance Policy.</p> <p>Response:</p> <p>Request for Production No. 2:</p> <p>Produce the entire contents of each of your underwriting files for the Insurance Policy.</p> <p>Response:</p>	<div style="border: 1px solid black; padding: 10px; margin: 10px;"> <p>Request for Production No. 2:</p> <p>Produce the entire contents of each of your underwriting files for the Insurance Policy.</p> </div> <p>Response:</p>

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<p>Request for Production No. 3:</p> <p>Produce a true and complete copy of each and every insurance policy -- other than the Insurance Policy produced in response to Document Request number 1 above -- that you sold or issued to [REDACTED] at any time prior to the commencement of this action.</p> <p>Response:</p> <p>Request for Production No. 4:</p> <p>Produce a true and complete copy of each and every insurance policy, that was submitted to [REDACTED] at any time prior to the commencement of this action.</p> <p>Response:</p> <p>Request for Production No. 5:</p> <p>Produce all documents referring or relating to, or used in connection with the formulation, drafting, approval, negotiation, underwriting, sale and placement of the Insurance Policy. This request includes all underwriting manuals.</p> <p>Response:</p>	<div style="border: 1px solid black; padding: 10px; margin: 10px;"> <p>Request for Production No. 5:</p> <p>Produce all documents referring or relating to, or used in connection with the formulation, drafting, approval, negotiation, underwriting, sale and placement of the Insurance Policy. This request includes all underwriting manuals.</p> </div> <p>Response:</p>
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<p>Request for Production No. 6:</p> <p>Produce all documents that refer or relate to, contain, comprise or evidence marketing representations distributed and used by you in the State of North Carolina, or with respect to risk exposures in the State of North Carolina, during the period 2000-2005 (including, but not limited to, advertisements, sales and/or marketing literature, policy highlights or policy illustrations), and referring or relating to one or more of the Key Policy Provisions.</p> <p>Response:</p>	<p>Request for Production No. 7:</p> <p>Produce all documents that refer or relate to, contain, comprise or evidence marketing representations distributed and used by you in the State of North Carolina, or with respect to risk exposures in the State of North Carolina, during the period 2000-2005 (including, but not limited to, advertisements, sales and/or marketing literature, policy highlights or policy illustrations), and referring or relating to one or more of the Key Policy Provisions.</p> <p>Response:</p>
<p>Request for Production No. 8:</p> <p>Produce all documents that refer or relate to, contain, comprise or evidence any policy language modifications that you made to one or more of the Key Policy Provisions between 1990 and 2007, and that you submitted to: (i) any state insurance commission, board, or similar agency; (ii) the Insurance Services Offices (ISO), or any other insurance industry trade association or organization; or (iii) any other governmental, regulatory or self-regulatory agency.</p>	

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<p>7. "Key Policy Provisions" as used in these Discovery Requests includes, but is not limited to:</p> <ul style="list-style-type: none"> (a) "I. Coverage - Attorney" in the "Insuring Agreement" section of the Insurance Policy; (b) "II. Coverage - Fiduciary" in the "Insuring Agreement" section of the Insurance Policy; (c) Subsection (g) in the "Exclusions" section of the Insurance Policy; (d) Subsection (o) in the "Exclusions" section of the Insurance Policy; (e) "II. Deductible and Limit of Liability" in the "Conditions" section of the Insurance Policy; (f) "V. Notice of Claim or Suit" in the "Conditions" section of the Insurance Policy; (g) "VIII. Action Against the Company" in the "Conditions" section of the Insurance Policy; (h) "X. Cancellation" in the "Conditions" section of the Insurance Policy. <p>8. The term "referring or relating to one or more of the Key Policy Provisions" shall mean, but is not limited to, commenting on, containing information regarding, involving, evidencing, connecting with (whether to support or oppose) this request for production, directly or indirectly, a specified subject matter shall always be the subject matter of the Request.</p> <p>9. The "Previous Coverage" shall mean, but is not limited to, any policy language modifications that you made to one or more of the Key Policy Provisions between 1990 and 2007, and that you submitted to: (i) any state insurance commission, board, or similar agency; (ii) the Insurance Services Offices (ISO), or any other insurance industry trade association or organization; or (iii) any other governmental, regulatory or self-regulatory agency.</p>	<p>7. "Key Policy Provisions" as used in these Discovery Requests includes, but is not limited to:</p> <ul style="list-style-type: none"> (a) "I. Coverage - Attorney" in the "Insuring Agreement" section of the Insurance Policy; (b) "II. Coverage - Fiduciary" in the "Insuring Agreement" section of the Insurance Policy; (c) Subsection (g) in the "Exclusions" section of the Insurance Policy; (d) Subsection (o) in the "Exclusions" section of the Insurance Policy; (e) "II. Deductible and Limit of Liability" in the "Conditions" section of the Insurance Policy; (f) "V. Notice of Claim or Suit" in the "Conditions" section of the Insurance Policy; (g) "VIII. Action Against the Company" in the "Conditions" section of the Insurance Policy; (h) "X. Cancellation" in the "Conditions" section of the Insurance Policy.
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<p>Response:</p> <p>Request for Production No. 12:</p> <p>If you contend that one or more of the Key Policy Provisions, then produce all documents that support or refute such contention, or that refer or relate to, comprise, or otherwise contain, including all documents relating or referring to, the interpretation, construction, meaning or intent of any such Key Policy Provision.</p> <p>Response:</p> <p>Request for Production No. 13:</p> <p>Produce all documents that refer or relate to, contain, comprise or evidence any communications made between you (or anyone acting on your behalf) and other members of the insurance industry (including, but not limited to, other insurers, reinsurers, underwriters, brokers, insurance industry organizations or any governmental, regulatory or self-regulatory agency) between 1990 and 2007 that refer or relate to the interpretation or application of one or more of the Key Policy Provisions.</p> <p>Response:</p> <p>142668.V5 17</p>	<p>Request for Production No. 13:</p> <p>Produce all documents that refer or relate to, contain, comprise or evidence any communications made between you (or anyone acting on your behalf) and other members of the insurance industry (including, but not limited to, other insurers, reinsurers, underwriters, brokers, insurance industry organizations or any governmental, regulatory or self-regulatory agency) between 1990 and 2007 that refer or relate to the interpretation or application of one or more of the Key Policy Provisions.</p> <p>Response:</p> <p>Yates, McLamb & Weyher, L.L.P.</p>
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<p>Response:</p> <p>Request for Production No. 21:</p> <p>Produce your claim file(s) for [REDACTED] claims against [REDACTED] within the past (7) years in any insurance coverage litigation involving the policy forms on which the Insurance Policy is underwritten (i.e., the "Lawyers Professional Liability Policy" form), and relating to the interpretation, construction, meaning or intent of any of the Key Policy Provisions.</p> <p>Response:</p> <p>Request for Production No. 22:</p> <p>Produce your claim file(s) for each and every other [REDACTED] under the Insurance Policy or any other insurance policy within the past (7) years in any insurance coverage litigation involving the policy forms on which the Insurance Policy is underwritten (i.e., the "Lawyers Professional Liability Policy" form), and relating to the interpretation, construction, meaning or intent of any of the Key Policy Provisions.</p> <p>Response:</p> <p>Request for Production No. 23:</p> <p>Produce all briefs, letter briefs or legal memoranda filed on behalf of Lawyers Mutual within the past (7) years in any insurance coverage litigation involving the policy forms on which the Insurance Policy is underwritten (i.e., the "Lawyers Professional Liability Policy" form), and relating to the interpretation, construction, meaning or intent of any of the Key Policy Provisions.</p> <p>Response:</p> <p>142668.V5 20</p>	<p>Request for Production No. 23:</p> <p>Produce all briefs, letter briefs or legal memoranda filed on behalf of Lawyers Mutual within the past (7) years in any insurance coverage litigation involving the policy forms on which the Insurance Policy is underwritten (i.e., the "Lawyers Professional Liability Policy" form), and relating to the interpretation, construction, meaning or intent of any of the Key Policy Provisions.</p> <p>Response:</p> <p>Yates, McLamb & Weyher, L.L.P.</p>
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<p><u>Response:</u></p> <p><u>Request for Production No. 29:</u> Produce all agreements and contracts in your possession and Lawyers Mutual.</p> <p><u>Response:</u></p> <p><u>Request for Production No. 30:</u> Produce all documents that refer or relate to, contain, comprise or evidence negotiations between Lawyers Mutual and [REDACTED] to resolve the Previous Coverage Lawsuit.</p> <p><u>Response:</u></p> <p><u>Request for Production No. 31:</u> Produce all documents that refer or relate to, contain, comprise or evidence any agreements or proposed agreements between Lawyers Mutual and [REDACTED] to resolve the Previous Coverage Lawsuit.</p> <p><u>Response:</u></p> <p>142668 VS 23</p>	<p><u>Request for Production No. 30:</u> Produce all documents that refer or relate to, contain, comprise or evidence negotiations between Lawyers Mutual and [REDACTED] to resolve the Previous Coverage Lawsuit.</p> <p><u>Response:</u></p> <p>Yates, McLamb & Weyher, L.L.P.</p>
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<p><u>Request for Production No. 32:</u> Other than the formal pleading itself, produce all documents that discuss, refer or relate to, comprise or evidence Lawyers Mutual 's decision to dismiss [REDACTED] from the Previous Coverage Lawsuit.</p> <p><u>Response:</u></p> <p><u>Request for Production No. 33:</u> Produce all documents that refer or relate to, contain, comprise or evidence [REDACTED] you considered in deciding to dismiss [REDACTED] from the Previous Coverage Lawsuit.</p> <p><u>Response:</u></p> <p><u>Request for Production No. 34:</u> Produce all documents that refer or relate to, contain, comprise or evidence the strategy and risk considerations you evaluated by in deciding to dismiss [REDACTED] from the Previous Coverage Lawsuit.</p> <p><u>Response:</u></p> <p>142668 VS 24</p>	<p><u>Request for Production No. 32:</u> Other than the formal pleading itself, produce all documents that discuss, refer or relate to, comprise or evidence Lawyers Mutual 's decision to dismiss [REDACTED] from the Previous Coverage Lawsuit.</p> <p><u>Response:</u></p> <p><u>Request for Production No. 34:</u> Produce all documents that refer or relate to, contain, comprise or evidence the strategy and risk considerations you evaluated by in deciding to dismiss [REDACTED] from the Previous Coverage Lawsuit.</p> <p><u>Response:</u></p> <p>Yates, McLamb & Weyher, L.L.P.</p>
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<p><u>Response:</u></p> <p><u>Request for Production No. 41:</u> Produce documents sufficient to show the composite identity of all officers, of Lawyers Mutual Liability Insurance Company of North Carolina, from January 1, 1999, to the present.</p> <p><u>Response:</u></p> <p><u>Request for Production No. 42:</u> Produce all depositions given by William S. Graebe, Esq. in any case brought by or against Lawyers Mutual Liability Company of North Carolina, or any of its related companies.</p> <p><u>Response:</u></p> <p><u>Request for Production No. 43:</u> Produce all depositions given by any employee, agent or representative of Lawyers Mutual Liability Company of North Carolina, or any of its related companies, in any matter involving [REDACTED] other than in any action to which [REDACTED] was a party at the time the deposition was taken.</p> <p><u>Response:</u></p> <p>142668 VS 27</p>	<p><u>Request for Production No. 42:</u> Produce all depositions given by William S. Graebe, Esq. in any case brought by or against Lawyers Mutual Liability Company of North Carolina, or any of its related companies.</p> <p><u>Response:</u></p> <p>Yates, McLamb & Weyher, L.L.P.</p>
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<p><u>Request for Production No. 44:</u> Other than those affidavits filed in this case or the Previous Coverage Lawsuit, produce all affidavits and other sworn statements of any kind given by William S. Graebe, Esq. in any case brought by or against Lawyers Mutual Liability Company of North Carolina, or any of its related companies.</p> <p><u>Response:</u></p> <p><u>Request for Production No. 45:</u> With the exception of those affidavits and other sworn statements produced in the Previous Coverage Lawsuit, produce all affidavits and other sworn statements of any kind given by William S. Graebe, Esq. in any case brought by or against Lawyers Mutual Liability Company of North Carolina, or any of its related companies, in any matter involving [REDACTED].</p> <p><u>Response:</u></p> <p><u>Request for Production No. 46:</u> Produce the non-privileged contents of your litigation and arbitration files in all matters involving [REDACTED].</p> <p><u>Response:</u></p> <p>142668 VS 28</p>	<p><u>Production No. 44:</u> Other than those affidavits filed in this case or the Previous Coverage Lawsuit, produce all affidavits and other sworn statements of any kind given by William S. Graebe, Esq. in any case brought by or against Lawyers Mutual Liability Company of North Carolina, or any of its related companies.</p> <p><u>Response:</u></p> <p>Yates, McLamb & Weyher, L.L.P.</p>
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<p><u>Request for Production No. 50:</u></p> <p>Please produce all unprivileged documents, records, communications, correspondence, emails, and other items of any kind that relate to, refer to, discuss, summarize or analyze in any way, the consent judgment submitted to the court in Previous Coverage Lawsuit.</p> <p><u>Response:</u></p> <p><u>Request for Production No. 51:</u></p> <p>Produce all documents that refer to the settlement agreement you entered into with [REDACTED] to resolve the Previous Coverage Lawsuit.</p> <p><u>Response:</u></p> <p><u>Request for Production No. 52:</u></p> <p>Please produce all unprivileged documents, records, communications, correspondence, emails, and other items of any kind that relate to, refer to, discuss, summarize or analyze in any way, the settlement agreement you entered into with [REDACTED] to resolve the Previous Coverage Lawsuit.</p> <p><u>Response:</u></p>	<p><u>Request for Production No. 50:</u></p> <p>Please produce all unprivileged documents, records, communications, correspondence, emails, and other items of any kind that relate to, refer to, discuss, summarize or analyze in any way, the consent judgment submitted to the court in Previous Coverage Lawsuit.</p> <p><u>Response:</u></p> <p><u>Request for Production No. 51:</u></p> <p>Produce all documents that refer to the settlement agreement you entered into with [REDACTED] to resolve the Previous Coverage Lawsuit.</p> <p><u>Response:</u></p> <p><u>Request for Production No. 52:</u></p> <p>Please produce all unprivileged documents, records, communications, correspondence, emails, and other items of any kind that relate to, refer to, discuss, summarize or analyze in any way, the settlement agreement you entered into with [REDACTED] to resolve the Previous Coverage Lawsuit.</p> <p><u>Response:</u></p>
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Yates, McLamb & Weyher, L.L.P.

<p><u>Response:</u></p> <p><u>Request for Production No. 60:</u></p> <p>Produce copies of all statements, reports, conclusions, recommendations and other items that were reviewed by, sent by, received by, created or generated by and/or considered by, Lawyers Mutual's claims attorneys (including without limitation William S. Graebe, Esq.) in the course of your handling the claims or demands of [REDACTED].</p> <p><u>Response:</u></p> <p><u>Request for Production No. 61:</u></p> <p>Produce all unprivileged documents, records, communications, correspondence, emails, and other items of any kind that relate to, refer to, discuss, summarize or analyze in any way, the settlement agreement you entered into with [REDACTED] to resolve the Previous Coverage Lawsuit.</p> <p><u>Response:</u></p> <p><u>Request for Production No. 62:</u></p> <p>Please produce a complete copy of all files, documents, records, work, analysis, notes, research, reports, conclusions, recommendations and other items that were reviewed by, sent by, received by, created or generated by and/or considered by, Lawyers Mutual's claims attorneys (including without limitation William S. Graebe, Esq.) in the course of your handling the claims or demands of [REDACTED].</p>	<p><u>Request for Production No. 60:</u></p> <p>Produce copies of all statements, reports, conclusions, recommendations and other items that were reviewed by, sent by, received by, created or generated by and/or considered by, Lawyers Mutual's claims attorneys (including without limitation William S. Graebe, Esq.) in the course of your handling the claims or demands of [REDACTED].</p> <p><u>Response:</u></p> <p><u>Request for Production No. 61:</u></p> <p>Produce all unprivileged documents, records, communications, correspondence, emails, and other items of any kind that relate to, refer to, discuss, summarize or analyze in any way, the settlement agreement you entered into with [REDACTED] to resolve the Previous Coverage Lawsuit.</p> <p><u>Response:</u></p> <p><u>Request for Production No. 62:</u></p> <p>Please produce a complete copy of all files, documents, records, work, analysis, notes, research, reports, conclusions, recommendations and other items that were reviewed by, sent by, received by, created or generated by and/or considered by, Lawyers Mutual's claims attorneys (including without limitation William S. Graebe, Esq.) in the course of your handling the claims or demands of [REDACTED].</p>
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Yates, McLamb & Weyher, L.L.P.

<p><u>Response:</u></p> <p><u>Request for Production No. 69:</u></p> <p>Produce the entire reserve history and related documents establishing and/or reflecting the reserve history regarding [REDACTED] actual or potential liability, Lawyers Mutual's exposure therefore, or your actual or potential liability.</p> <p><u>Response:</u></p> <p><u>Request for Production No. 70:</u></p> <p>For each year or fiscal year, produce the minutes of all your claims committee meetings since April 18, 2002 at which [REDACTED] or [REDACTED] claims, demands or judgment were discussed or referenced.</p> <p><u>Response:</u></p> <p><u>Request for Production No. 71:</u></p> <p>Produce the minutes of all your claims committee meetings since April 18, 2002 at which [REDACTED] or [REDACTED] claims, demands or judgment were discussed or referenced.</p> <p><u>Response:</u></p>	<p><u>Request for Production No. 71:</u></p> <p>Produce the minutes of all your claims committee meetings since April 18, 2002 at which [REDACTED] or [REDACTED] claims, demands or judgment were discussed or referenced.</p>
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Yates, McLamb & Weyher, L.L.P.



Limited Grounds for Summary Judgment

- 3. Judgment not within insuring clause
- 4. Officer/manager exclusion
- 5. Collateral estoppel

Yates, McLamb & Weyher, L.L.P.

HOLDING

(1) North Carolina law applies to the facts of this case.

(2) The entire process of offering to [REDACTED] the investment in Fund III was permeated by repeated misrepresentations on the part of all of the Respondents. The misrepresentations occurred in inducing [REDACTED] to invest \$1,000,000.00 in return for promissory note, and then in inducing [REDACTED] to convert its \$1,000,000.00 investment from a promissory note

(3) Cautionary and its principals (both exculpate Respondent because of misrepresentation. The misrepresentations managers from liability agents were reading the would read it and that the [REDACTED]

(4) Respondent [REDACTED] for negligent misrepresentation [REDACTED] accurate, true and correct. In this obligation, Respondents Brothers [REDACTED] and [REDACTED] were negligent.

(5) The liability of [REDACTED] is joint and several.

(6) No grounds under North Carolina law for an award of attorney's fees to [REDACTED] have been asserted or found by the Arbitrator.

Fund III. As the persons who controlled Fund III as fund managers, and who possessed the ability to influence information given to [REDACTED] and other prospective investors, Respondents had both the opportunity, as well as the obligation, to insure [REDACTED]

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Yates, McLamb & Weyher, L.L.P.

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Insuring Agreement

I. Coverage – Attorney

Subject to the limit of liability, to pay on behalf of an Insured . . . all sums which such Insured shall become legally obligated to pay as money damages as compensation for actual monetary loss caused by any act(s) or omissions(s) of any Insured in rendering or failing to render legal services for others while engaged in the private practice of law and while duly licensed to practice law.

Yates, McLamb & Weyher, L.L.P.



Officer/Manager Exclusion

EXCLUSIONS AND LIMITED WAIVER

...

(g) any claim . . . based in whole or in any part upon any Insured's act(s) or omission(s) occurring, in whole or in any part, while such Insured is, in any way, or to any extent, acting in his or her capacity as an owner, officer, manager. . . of a business enterprise. . . .



Summary Judgment Hearing

THE COURT. . . In other words, they (LMNC) sued you, kicked you out of the case, and subsequently entered into what you contend to be an unfair and deceptive type of consent deal in order to cut your clients off from, number one, participation in the declaratory judgment action, which was initially filed. And number two, to cut you off from any coverage or award against [Clark] to be paid by Lawyers Mutual

PDQ ATTORNEY: That is correct.

...

THE COURT: I'm just saying that it really it ticked you off when you found out that you'd been had, right?

PDQ ATTORNEY: I believe that is the case, Your Honor



Jul-02-2009 01:16pm From: T-126 P.002/004 F-225

NORTH CAROLINA: IN THE GENERAL COURT OF JUSTICE
WAKE COUNTY: SUPERIOR COURT DIVISION
08-CVS-7293

FILED
JUL 2 2009
CLERK OF COURT

Plaintiff,

v.

LAWYERS MUTUAL LIABILITY
INSURANCE COMPANY OF NORTH
CAROLINA and

Defendants.

ORDER Re: SUMMARY JUDGMENT

THIS MATTER came on for hearing before the undersigned Judge of Superior Court at the June 8, 2009, civil session of the Wake County Superior Court, upon Defendant Lawyers Mutual Liability Insurance Company of North Carolina's ("LMLIC") Motion for Summary Judgment. The motion was on the regularly scheduled trial calendar but the Court was unable to hear the motion due to two back to back trials that week and the motion was continued until Tuesday, June 16, 2009. Counsel for plaintiff and defendants were present at the hearing and the Court heard arguments for approximately an hour and three quarters.

Prior to the hearing the Court was presented with memoranda, and two motion notebooks containing over a foot of paper. In view of the complexity of the issue and amount of material submitted and depositions, the Court took the motion under advisement. After considering the foregoing, matters of record (the Court specifically did not read the transcripts of the arbitration hearing or review its exhibits and advised counsel of such at the hearing as it is unnecessary for purposes of the Court's decision in this case) and memoranda and authorities submitted by both sides, the Court rules as follows:

DECISION

contends that LMLIC should provide coverage for actions as an attorney in connection with the activities of Fund III and thereby pay the \$1,000,000 award against arising out of the binding arbitration award/judgment in which participated fully. LMLIC contends that the claims against LMLIC arising out of conduct are barred by the doctrine of collateral estoppel by virtue of the binding arbitration award/judgment between and others involved as fund managers of Fund III.

Yates,
McLamb &
Weyher, L.L.P.

Jul-02-2009 01:16pm From: T-126 P.003/004 F-225

The Court has considered the record and the binding arbitration award in 03 CVS 4991, which award has been confirmed and affirmed on appeal in an unpublished opinion, 673 S.E. 2d 168 (2009). Based on the undisputed facts and the arbitration award/judgment, the Court determines there are no genuine issues of material fact in dispute and that claims against for legal malpractice and any work that may have been covered under the LMLIC insurance policy in regards to employment as a lawyer are barred by the doctrine of collateral estoppel.

Reduced to essentials had the opportunity to fully litigate its claims against for malpractice as an attorney in the arbitration. lost its case in the arbitration as far as claims for malpractice and thus, may not have another "bite at the apple" in this case as its claims against are gone forever as a result of the arbitration award and decision. Accordingly, the Court will grant LMLIC's motion for summary judgment on this basis alone.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED, that:

1. That defendants' motion for summary judgment is granted.

2. That this action is dismissed with prejudice.

3. The Court, in its discretion, direct

This the 2nd day of July 2009
Howard E.
Superior Court

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Yates,
McLamb &
Weyher, L.L.P.

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