Business Insurance

Insurers can't rescind cover for Milberg law firm: Court

Posted On: Oct. 01, 2009 10:46 AM CST

Sally Roberts

NEW YORK—Attempts by a group of insurers to rescind professional liability coverage for disgraced law firm Milberg L.L.P. are time-barred, a federal court judge ruled.

Lloyd's of London syndicates, Zurich Specialties London Ltd., and Illinois Union Insurance Co., a unit of ACE Ltd., sued Milberg and four former partners in August 2008, seeking to rescind Milberg's professional liability coverage and recover $4.8 million in defense costs and claims paid.

The insurers argued that Milberg made false statements on its insurance application by saying it was unaware of any circumstances that may result in a claim against the law firm.

It was later revealed that from about 1978 through 2005, Milberg and some partners operated a fraudulent scheme involving kickbacks to named plaintiffs in hundreds of class action and shareholder derivative lawsuits.

The former partners named in this suit—Melvyn I. Weiss, David J. Bershad, William S. Lerach and Steven G. Schulman—pleaded guilty to charges based on their respective roles in the scheme in 2007 and 2008; the law firm itself reached a settlement in June 2008.

The professional liability policies in question were in place from Jan. 31, 2001, through Jan. 31, 2004.

Milberg moved to dismiss the rescission motion, arguing that insurers failed to comply with the New York state statute of limitations, which limits claims to six years from the start of the fraud or two years from the time the plaintiff discovered or with reasonable diligence could have discovered the fraud, whichever is later.

On Wednesday, U.S. District Court Judge Loretta A. Preska of the Southern District of New York ruled that the insurers' rescission is subject to the six-year statute of limitations because the complaint alleged actual fraud in the inducement of the policy. Therefore, the insurers' statute of limitations ended Jan. 31, 2007, rendering the 2008 rescission motion untimely.

Marc S. Mayerson, the attorney representing Milberg, said the firm had been in an ongoing dialogue with its insurers since the law firm became subject of a federal investigation in 2002.

The insurers paid claims “and then hauled off and sued us,” said Mr. Mayerson of Hollingsworth L.L.P. in

Washington. “It was odd, frankly, because it was both late and they never talked to us about filing a case for rescission before they did.”

The insurers' attorney could not be reached immediately for comment.