

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 30, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 99-0150

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STEVEN C. DEISS AND SHELLEY A. DEISS,

PLAINTIFFS-CO-APPELLANTS,

V.

**NATIONAL UNION FIRE INSURANCE COMPANY
OF PITTSBURGH,**

DEFENDANT-RESPONDENT,

LESLIE J. WEBSTER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Pierce County:
DANE F. MOREY, Judge. *Affirmed.*

Before Cane, C.J., Myse, P.J., and Hoover, J.

PER CURIAM. Steven and Shelly Deiss and their former attorney, Leslie J. Webster, appeal a summary judgment dismissing Webster's malpractice

insurer, National Union Fire Insurance Company of Pittsburgh, from the Deiss's malpractice action against Webster. The policy excludes coverage for any claim arising out of criminal, dishonest or fraudulent acts. The trial court concluded that because the Deisses and Webster fraudulently concealed property from a bankruptcy trustee, the insurance policy provided no coverage for Webster's representation of the Deisses in the bankruptcy action. The Deisses argue that in addition to Webster's negligent representation in the bankruptcy matter, he negligently provided other legal advice and services that are covered under the policy. Webster also argues that the negligent acts the Deisses complain of may be wholly unrelated to the fraudulent acts he and the Deisses jointly committed in the bankruptcy proceeding. Because we conclude that the Deisses have not identified any negligent act by Webster that would be covered under his professional liability policy, we affirm the judgment dismissing National Union.

The Deisses retained Webster to assist them with incorporating their tavern business and for debtor/creditor services. Webster recommended that they file for bankruptcy. Based on Webster's advice, the tavern was not listed as an asset in the bankruptcy paper work. Webster was convicted of aiding and abetting the concealment of an asset from the bankruptcy trustee. Steven Deiss, after entering into a plea agreement that would protect Shelly from prosecution, pleaded guilty to bankruptcy fraud. The Deisses then brought this action against Webster and his insurer alleging that Webster "negligently represented the Plaintiffs in connection with the preparation and filing of the federal bankruptcy petition." The complaint further alleges that "the legal advice and services rendered by defendant, Leslie J. Webster, to the Plaintiffs, were beneath the standard of care for attorneys practicing bankruptcy law in Wisconsin at the time in question." Conceding that there is no coverage for Webster's criminal and fraudulent acts,

the Deisses and Webster nonetheless argue that the policy provides coverage for any other malpractice Webster may have committed during his representation of the Deisses.

While a broad construction of the complaint would support the proposition that the Deisses sought recovery for other malpractice unrelated to the bankruptcy fraud, they have never identified any specific act of negligence other than Webster's participation in the bankruptcy fraud scheme. The Deisses answers to interrogatories asking them to state with particularity each act or failure to act that constitutes negligence identified only the bankruptcy proceeding. After completion of discovery, the Deisses can no longer rely on the bare allegations of their complaint, but must bring forth evidentiary facts that would establish some basis for a negligence claim against Webster other than his handling of the bankruptcy petition. *See Larson v. Kleist Builders, Ltd.*, 203 Wis.2d 341, 345, 553 N.W.2d 281, 283 (Ct. App. 1986). The only action the Deisses specifically identify was Webster's failure to correct the fraudulent filing at an earlier date. Webster's failure to terminate and rectify the fraud he jointly perpetrated with the Deisses is not a separate act of negligence. It is merely a continuation of the criminal and fraudulent acts that are not covered by the insurance policy. Because the Deisses and Webster have failed to identify any negligent act not excluded under the terms of the policy, the trial court properly dismissed National Union from this action.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

