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**PANAMA**

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**Insurers Reportedly Reject Coverage Claim by Mossack Fonseca**

by William Hoke

The Panamanian law firm whose confidential client files triggered an international scandal when they were leaked in 2016 has reportedly filed suit against its insurance companies for denying coverage on an \$8 million claim for damage to its reputation resulting from the Panama Papers disclosures.

Panamanian newspaper *La Estrella* reported on March 29 that it had obtained a copy of the lawsuit filed by Mossack Fonseca two days earlier against AIG Seguros Panamá y ASSA Compañía de Seguros. The newspaper reported that Mossack Fonseca said in the lawsuit that despite a provision in the insurance contract stating that “the insurer shall have the right and the obligation to defend any claim for damages even if its allegations may be false or unfounded,” the insurance companies rejected the claim on grounds that the law firm had been engaged in money laundering.

The Panama Papers, which were made public in April 2016, led to investigations by authorities in Panama and a number of other countries, aimed at determining whether Mossack Fonseca was helping clients evade taxes, launder money, and bribe government officials. Mossack Fonseca said in March that the repercussions of the theft of its information have caused incalculable damage to the firm, its employees, and its reputation. Mossack Fonseca’s two founding partners were detained for questioning in February and remain in custody in Panama. Some of the most explosive allegations involve the firm’s connection with a Brazilian construction and engineering company that admitted bribing government officials throughout Latin America. Mossack Fonseca has claimed it has done nothing illegal.

While the firm failed to reply to a request for comment about the lawsuit, it has previously said that its client files were stolen by third parties and made public in violation of laws protecting attorney-client privilege.

According to Kenneth Rijock, a former banker based in Miami who publishes a blog on money laundering and financial crime, the principle of attorney-client privilege does not apply in many jurisdictions if the attorney and the client were jointly engaged in criminal activities. “All counsel’s efforts to have their clients released on bond have failed, due in part to the discovery that the law firm was destroying evidence on a grand scale, even secreting shredded internal documents in a private residence, to avoid detection and seizure,” Rijock wrote in his blog on April 18.

It’s not clear whether Mossack Fonseca is claiming that the insurance companies cannot legally deny its claim because the information on which the allegations against it were based resulted from a breach of attorney-client privilege or whether the law firm is simply stating that the allegations are baseless.

*La Estrella* reported that Mossack Fonseca claimed in its lawsuit that the insurance companies denied its claim in July 2016 by citing definitions in the policy but without providing specific explanations as to why those definitions relieved the insurers of their contractual responsibility to honor the claim.

A notice on the website of AIG Seguros Panamá said its operations had been acquired by ASSA Compañía de Seguros in August 2016. ASSA did not respond to a request for comment.

Matthew D. Lee of Fox Rothschild said that while he is unfamiliar with the principle of attorney-client privilege under Panamanian law, a U.S. court could order that the privilege be set aside if the client sought legal advice for the purpose of committing a crime or fraud. “In order to conclude that the ‘crime-fraud’ exception applies, a [U.S.] court must find that the client was committing, or intending to commit, a criminal or fraudulent act, and the communications between attorney and client were in furtherance of that crime or fraud,” Lee said.

Ava Borrasso, a Miami-based lawyer who has published an article about the issue of attorney-client privilege against the backdrop of the Panama Papers, said civil law jurisdictions, which are prevalent in Latin America and Europe, generally protect professional secrets by statute through criminal code or ethical rules. Whether

asserting attorney-client privilege will help Mossack Fonseca in its insurance suit is unclear, she said. "You can assert certain claims and you can assert certain defenses and whether they end up prevailing depends on the ability to prove them," Borrasso said. "Without knowing the particular facts of the case, an insurance policy for a law firm typically has, like most professional coverage policies, some kind of an exclusion for intentional or grossly negligent wrongful conduct. Perhaps Mossack Fonseca is denying that they were involved in wrongful conduct and is trying to use the privilege as a shield to the underlying documents."

Borrasso said it will be interesting to see how many of the cases end up in court and how the privilege issues are treated. "There is pretty strong evidentiary privilege in many jurisdictions, but it varies from jurisdiction to jurisdiction," she said. "It depends on which privilege you are claiming, which jurisdiction's evidentiary privileges apply, whether there are exceptions, and when the exceptions kick in." ■