HINSHAW

Alerts

Court Examines the Term "For" as Used in an Exclusion in an Insurance Policy

February 25, 2013
Insurance Coverage Alert

By: Kent J. Cummings

American Zurich Insurance Co. v. Wilcox and Christopoulos, LLC, 2013 IL App (1st) 12042

The term “for” as used in an exclusion in a lawyers professional liability insurance policy was recently examined by the Illinois Appellate Court. On January 17, 2013, the court found that the business pursuits exclusion applied to the entire law firm even if only one lawyer had a business interest in the enterprise. The court also found that the lawyer who had a business interest in the enterprise was performing acts “for” the enterprise even if he was actually working directly for a different, but related, entity.

Both an insured law firm and a separate company owned by one of the law firm’s principals specialized in obtaining liquor licenses from the city of Chicago. The two organizations were jointly hired by a partnership that was interested in opening a restaurant. To obtain the liquor license, the restaurant partners had to undergo background checks. The manager of the liquor license company and the law firm principal allegedly jointly determined that the application for a liquor license would be denied if the name of one particular restaurant partner appeared in the application or associated documents. To remedy this problem, they allegedly created false articles of amendment, a false operating agreement, etc., for the restaurant partnership in order to remove that partner’s name from the application.

The insured law firm, the principal and others were sued by an investor in the restaurant partnership, alleging a civil conspiracy to open and operate a restaurant by illegal means. The law firm and the law firm principal submitted the claim to their professional liability insurer. The insurer filed a declaratory judgment action seeking a determination that no coverage was owed either to the principal or the law firm. The insurer argued that the claim did not fall within the scope of the insuring agreement and, even if it did, that exclusions applied. The two relevant exclusions provided, in pertinent part:

This policy shall not apply to any Claim based upon or arising out, in whole or in part:

* * *

D. the Insured’s capacity or status as:

1. an officer, director, partner, trustee, shareholder, manager or employee of a business enterprise, charitable organization or pension, welfare profit sharing, mutual or investment fund or trust;

* * *

E. The alleged acts or omissions by any Insured, with or without compensation, for any business enterprise, whether for profit or not-for-profit, in which any Insured has a Controlling Interest.

The trial court held that the claims against the law firm fell within the insuring agreement, and the insurer did not appeal that ruling. The trial court also held that Exclusions D and E applied to the law firm principal, but found that neither exclusion applied as to the law firm.

On appeal, the insurer argued that Exclusion E applied whenever the alleged acts or omissions of "any" insured were for a business enterprise. The appellate court agreed, simply applying the clear policy language. The appellate court, however, devoted considerable analysis to the law firm's argument that the lawyer's alleged acts or omissions were not "for" the liquor license company — the business enterprise in which he had an interest — but rather for the firm's client, the restaurant partnership.

The court cited the American Heritage Dictionary and found that the term "for" was unambiguous and meant, essentially, "for the benefit of." The court found that the lawyer was acting for two companies, and that his work to change the documents of the restaurant partnership was also for the benefit of his own company, which had been engaged by the restaurant partnership to help obtain the liquor license.

Practice Note

The word "for" is found in numerous coverage forms and endorsements. For example, a commonly used additional insured endorsement requires that the named insured be performing operations or work "for" the putative additional insured. The court's broad application of the word in this case (and especially its finding that the term is unambiguous) may be helpful in a variety of contexts. But, in the context of the business enterprise exclusion itself — a fairly standard exclusion in lawyer professional liability policies — this case presents opportunities for broad application of the exclusion, permitting insurers to look beyond the attorney-client relationship to identify other business enterprises being benefited by the insured's activities. We note, however, that, while the exclusion is quite standard, the wording varies, and the precise wording is, of course, critical.

Download PDF