



Alerts

No Coverage for Insurance Agent's Claim Against His Agency for Failure to Procure Coverage

November 2, 2011

The Professional Lines Alert

Plaintiff insurance agent was employed by his corporate insurance agency and was both an agent and an insured under the E&O policy issued to agents by defendant carrier. When the insured agent injured another agent in a jet ski accident in Mexico, he made a claim against his agency for failure to provide insurance coverage for bodily injury arising out of the use of any water craft in Mexico. The carrier denied coverage and when the injured party filed a personal injury lawsuit, the carrier declined to provide a defense. The insured agent and the injured party entered into a settlement agreement which included assignment of the insured agent's claims against his agency and the carrier for breach of contract and bad faith. The injured party, as assignee, then sued the carrier.

The Court's Decision

Following is the issue considered by the court and how the court decided it.

Issue: Was coverage properly denied for a claim under an E&O policy by an individual insurance agent against his own insurance agency for failure to render professional services to himself?

Yes. Summary judgment was granted in favor of the carrier because the E&O policy issued to insurance agents did not cover a claim by the individual insurance agent against the insurance agency he owned for failure to procure adequate insurance coverage for the agent in his individual capacity. The court found that because a corporation only acts through its officers and agents, the corporation cannot commit professional negligence unless its agent also committed professional negligence. The E&O policy here covered only negligent acts, errors or omissions of the insured in rendering or failing to render professional services to others. The insured agent was really alleging that he had failed to render professional services to himself. The court commented that when the action was "backed out" of the settlement agreement/assignment, it was a bare lawsuit by the insured agent against his corporate agency for not buying his own insurance. The law did not recognize any liability of the insurance agent to himself.

What the Court's Decision Means for Practitioners

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This is an example of pushing the corporate fiction to an extreme in an effort to obtain insurance coverage. The court considered the individual insurance agent and his corporate agency as being one entity for purposes of determining whether coverage existed.

White v. Arch Insurance Company, 2011 WL 2680323 (D. Ariz. July 8, 2011)

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