

Defense Required for Action under Consumer Fraud Statute

August/September 2002

A United States district court in Chicago has determined that a professional liability insurer must defend a suit under Illinois's Consumer Fraud Act because it could encompass claims for negligent conduct. *Connecticut Indemnity Co. v. Auto Europe, Inc., et al.*, 2002 U.S. Dist. LEXIS 14438 (N.D. Ill. Aug. 6, 2002).

DER Travel was insured under a travel agent's professional liability policy. The policy provided DER Travel with insurance coverage for "any negligent act, error, or omission of the insured or any other person for whose acts the named insured is legally liable in the conduct of travel agency operations..." DER Travel was named as a defendant in an action alleging that it violated the Illinois Consumer Fraud and Deceptive Business Practices Act by improperly calculating the value-added tax due on car rentals in Europe. It sought coverage for the suit under its policy. The insurer denied coverage under the policy on the grounds that the alleged fraud was intentional.

In the subsequent coverage suit, the United States District Court for the Northern District of Illinois found that the insurer did have a duty to defend DER Travel in the Consumer Fraud Act case. Noting that " '[i]f the complaint states a claim that is within, or even potentially or arguably within, the scope of coverage provided by the policy,' the insurer is obligated to defend the insured...", the court found that "[t]he insurer may properly refuse to defend only if it is clear from the face of the complaint that the alleged misconduct is not covered under the insurance policy."

The court found that the underlying complaint could encompass a claim for negligent misrepresentation. Since the Consumer Fraud Act does not require proof of intent to deceive, an innocent or negligent misrepresentation is sufficient to establish liability under the Consumer Fraud Act. Because the underlying complaint was ambiguous as to whether it alleged a violation of the Consumer Fraud Act through intentional or negligent misrepresentations, the court resolved this ambiguity in favor of the insured.