

E&O Policy Affords Coverage to Benefits Company for Acts Involving Its Own Employees

October 2003

In an unreported decision, the United States Court of Appeals for the Fifth Circuit has held that coverage is available to a benefits management company, insured under an E&O policy, for a claim arising out of alleged wrongful acts in providing benefits to the company's own employees. *Administaff, Inc. v. Am. Int'l Specialty Lines Ins. Co.*, 2003 WL 22080760 (5th Cir. Sept. 9, 2003).

The insurer issued an E&O policy to a company that provided personnel management and human resources services to other companies (benefits management company). The policy provided coverage for "all sums which the Insured shall become legally obligated to pay as Damages resulting from any claim or claims first made against the Insured and reported to the Company during the Policy Period for any Wrongful Act of the Insured." The policy defined "Wrongful Act" as "any actual or alleged breach of duty, neglect, error, misstatement, misleading statement or omission solely in the conduct of the Insured's Profession." "Insured's Profession" was defined as "Soley [sic] in the performance of recruiting and selection, outplacement services, employer liability management and assistance...benefit management, HR consulting...."

The benefits management company filed a lawsuit against a company that was providing health insurance to the benefit management company's employees. The company counterclaimed, alleging that the benefits management company was liable for violations of ERISA, breach of contract and misrepresentations. The benefits management company sought coverage under its E&O policy, and the insurer denied coverage on the grounds that any liability resulting from the counterclaim was for actions the benefits management company took with respect to its own employees, and not for performance of its profession for customers.

The Fifth Circuit rejected the insurer's argument and held that coverage was available, reasoning that the policy provided coverage for wrongful acts in providing benefits management and that the benefits management company was alleged to have committed wrongful acts in providing benefits to its own employees. The court also rejected the insurer's argument that coverage was only available with respect to services provided to consumers, stating that "[n]othing in the policy indicates the policy covers only Wrongful Acts alleged by [the benefits management company's] client-consumers." The court therefore remanded the case to the trial court to consider additional coverage issues, including the application of certain exclusions.

For more information, please contact us at 202.719.7130.