

Property Damage Exclusion in E&O Policy Does Not Apply to Reprinting of Mailing to Correct Errors

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A Texas appellate court has held that the property damage exclusion in an E&O policy issued to a printing company did not bar coverage for costs that the printing company incurred to reprint a mailing because the original printing contained erroneous information. *Venture Encoding Serv., Inc., v. Atl. Mut. Ins. Co.*, No. 2-02-020-CV, 2003 WL 2004361 (Tex. App. May 1, 2003).

The case arose when an insurer denied coverage to a printing company for the costs of reprinting a mailing because the original mailing contained erroneous information. The policy provided coverage for "sums that the insured becomes legally obligated to pay as damages arising out of any negligent act, error or omission committed by...the insured in the course of providing or failing to provide 'printing services.'" The policy excluded coverage for "costs or damages incurred for the correction, or repair or replacement of 'property damage' to... 'Your product' arising out of such products, or any part of such products." However, the exclusion contained an exception for "damages incurred due to the withdrawal or inspection of such products or work because of any known or suspected defects or deficiency therein." The policy defined "property damage" as "[p]hysical injury to tangible property, including all resulting loss of use of that property; or...[l]oss of use of tangible property that is not physically injured."

The court held that the exclusion for property damage did not apply because the misprinting did not constitute "property damage." The court reasoned that an "[e]rror in information is intangible property not tangible property," and "[d]amage to intangible property constitutes economic loss, not property damage."

The court also rejected the insurer's argument that coverage was unavailable because the policyholder had not been "legally obligated to pay" for correcting the mistake in printing services. The court reasoned that several contractual provisions in the policyholder's contract to complete the mailing required the policyholder to cover all expenses for corrective actions or negligent performance, and that the policyholder was thus contractually bound to pay for the reprinting.

For more information, please contact one of WRF's Professional Liability Attorneys at 202.719.7130