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NEWSLETTER

Corporate Officer Was Not Acting in an Insured Capacity When He Allegedly Defamed His Employer

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The United States Court of Appeals for the Ninth Circuit affirmed a lower court's ruling that a corporate officer could not have been acting in an insured capacity with respect to conduct against the interests of his employer, the named insured under the applicable CGL policy. *Haggerty v. Federal Ins. Co., et al.,* No. 00-57063, 2002 U.S. App. LEXIS 3453 (9th Cir. Mar. 1, 2002).

The plaintiff officer brought this declaratory judgment action seeking coverage under a CGL policy for a defamation lawsuit brought by the officer's former employers. The employers alleged that the officer made defamatory statements against the interests of one of his employers in breach of his contractual and fiduciary duties. The officer sought coverage under the policy for additional insureds, which stated in relevant part that that the policyholder's "'executive officers' and directors are insureds, but only with respect to their duties as [the policyholder's] officers and directors."

The court rejected the officer's claim that the term "duties" should be interpreted broadly to include the alleged misconduct that benefited him personally. The court found inapposite cases where an officer sought coverage for a claim brought by a third party and highlighted that in this case the officer sought coverage for a claim brought by his employer, the holder of the policy. The court found no evidence for the officer's assertion that the statements that were the subject of the defamation suit were communications made during his employment to employees regarding the employer's 401(k) plan. Since the court concurred with the lower court's decision that the officer's proffered evidence in support of this argument was inadmissible, the court found no evidence that the officer's alleged defamatory statements were made in an insured capacity.