

Policy Covers Allegations of Fraud and Deceptive Schemes Despite Intentional Fraud Exclusion

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In a case addressing the same underlying action involved in *Commercial Union Ins. Co. v. Auto Europe, L.L.C.* (see page 1), the federal court for the District of Maine granted summary judgment in favor of a policyholder, finding that an insurer had a duty to defend it against allegations of fraud and deceptive schemes despite policy exclusion for intentional fraud, where deceptive conduct under the applicable state statute required only proof of negligence and not intent. *Auto Europe v. Connecticut Indemnity Co.*, No. 01-271, 2002 U.S. Dist. LEXIS 5249 (D. Me. March 28, 2002).

The underlying complaint alleged that the policyholder engaged in a "fraudulent and deceptive scheme" by "deceptively concealing from plaintiffs and [its] other customers a non-tax 'add-on' to the base price of the car rental." The applicable policy provided coverage for "any negligent act, error or omission of the 'insured' in the conduct of 'travel agency operations' by the 'named insured.'" The insurer denied coverage, contending the complaint alleged only "intentionally fraudulent, duplicitous, conspiratorial and criminal actions" which do not constitute "negligent acts, errors or omissions" under the policy and that the "allegations fall within the policy exclusion for liability arising from willfully dishonest, fraudulent, malicious or criminal acts." The opinion does not indicate the type of policy.

The court noted that the underlying "[c]omplaint cannot be construed to allege damages that were 'an accidental unintended consequence of an act allegedly committed intentionally,' which could result in coverage under the policy." However, the court found that "if the intentional acts alleged in a complaint do not require a subjective desire for the damage alleged or the subjective foreseeing of the damage as a result of the conduct as an element of proof, a duty to defend will be found."

Here, the court conceded that the underlying complaint does allege bad faith and intentional conduct, but noted that it also alleged deceptive conduct under the applicable Maine statute, which provided that "an act may be deceptive...even though the defendant had no purpose to deceive and acted in good faith." Thus, the court stated that deceptive conduct under this statute did not require proof of intent, but only proof of negligence. Since the policy allowed coverage for negligence, the court held that the policyholder was entitled to a declaratory judgment.