

Coverage for Embezzlement by Employee of Policyholder Barred under I v. I and Conversion Exclusions

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A federal district court in Louisiana held that a policyholder, insured under a claims-made real estate licensee policy, is not entitled to coverage for losses resulting from embezzlement by an employee because the loss is excluded under both the I v. I and conversion exclusions in the policy. *See PNA, L.L.C v. Interstate Ins. Group*, 2003 WL 21488120 (E.D. La. June 20, 2003).

The insurer issued a real estate licensee policy to a company providing real estate services. The policy contained an exclusion for "conversion, misappropriation, commingling, or defalcation of funds or other property." The policy also contained an I v. I exclusion, barring coverage for "[a]ny 'claim' made by an insured under the policy against any other insured."

An employee of the real estate company embezzled money from the company, which then sought to recover the money from its insurer. The insurer denied coverage, and litigation ensued.

The court agreed with the insurer that the I v. I exclusion barred coverage. It reasoned that even if the employee who embezzled under the policy was not an insured, the claim was being asserted by the principals of the company who were insureds.

The court also held that the exclusion for conversion "unambiguously barred coverage." The policyholder argued that the exclusion was ambiguous or otherwise unenforceable because another exclusion in the policy, which barred coverage for dishonest, fraudulent, or criminal acts, contained an exception for "innocent insureds." The court rejected the argument, explaining that the insurer had simply decided to include an exception to one exclusion, but not the other.

For more information, please contact us at 202.719.7130.