

Excess Insurer Did Not Act in Bad Faith by Disclaiming Coverage Based on a Professional Liability Exclusion

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A Pennsylvania state trial court has determined that an excess insurer did not act in bad faith by disclaiming coverage based on a professional liability exclusion in a general liability insurance policy, even though the court disagreed with the insurer's determination that the exclusion was applicable. *Egger v. Gulf Ins. Co.*, 2004 WL 516687 (Pa. Ct. Com. Pl. Mar. 10, 2004).

The insurer issued an excess general liability policy to a company that provided security guard services. The underlying litigation arose after an employee died in an accident, and his estate alleged negligence on the part of the company in connection with his death. The excess insurer reserved its rights, contending that the claim "did not arise out of [the company's] security guard or investigative operation," but rather out of "the alleged negligent provision of emergency medical services." After the company was found liable in an amount that implicated the excess insurer's layer, it sought indemnification. The insurer denied coverage, and the company sued alleging breach of contract and bad faith. In a prior ruling, the court had found that the professional liability exclusion in the policy did not preclude coverage.

In this decision, the court held that the insurer did not act in bad faith by denying coverage. The court reasoned that the excess insurer had conducted an appropriate and reasonable investigation of the underlying action and clearly notified the company in a reservation of rights letter that it believed coverage was unavailable. The court also noted that, as an excess carrier, the insurer did not have an obligation to provide coverage until the primary policy had been exhausted. Accordingly, the court concluded that the claimant "failed to demonstrate by clear and convincing evidence that [the insurer] lacked a reasonable basis to deny coverage or that it handled the claim improperly or that it was motivated by self-interest or ill will."

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