

Fee Exclusion Does Not Bar Duty to Defend Claim for Deceptive Debt Management Services

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The United States District Court for the District of Maryland, applying Maryland law, has held that a fee exclusion in an E&O policy did not bar an insurer's duty to defend an insured in a class action in which the plaintiffs alleged that the insured engaged in deceptive debt management and credit counseling activities. *Ace Am. Ins. Co. v. Ascend One Corp.*, 2007 WL 1774495 (D. Md. June 15, 2007).

The insured sold debt management plans to consumers and described itself as a non-profit organization. The plaintiffs in the underlying action alleged that the insured in reality ran a for-profit company that did not substantially reduce its clients' debt and that charged its clients monthly fees.

The E&O policy contained the following exclusion: "this policy does not apply to any Claim against the Insured based on or arising out of . . . any dispute involving fees, expenses or costs paid to or charged by the Insured." The insurer argued that "the essence of the class action at issue is an allegation that [the insured] defrauded consumers by requiring them to pay illegal fees and expenses."

The court disagreed, citing Maryland case law "indicat[ing] that each individual count of the complaint must be analyzed to determine whether it falls within the policy's coverage." The court determined that the complaint was "not limited to a request that the allegedly fraudulently obtained fees be returned." The court stated that the "[p]laintiffs also allege that [the insured] caused consumers to incur late fees, increase their debt and hurt their credit ratings" and that the plaintiffs "allege that [the insured's] practice of advising consumers not to file for bankruptcy adversely affected consumers' financial situations." The court concluded that "[n]one of the damages from these allegations can fairly be said to arise from a dispute involving 'fees, expenses or costs paid to or charged by' [the insured]," and then held that because at least one claim did not fall within the terms of the fee exclusion, the insurer had a duty to defend the entire action.