

# Exclusion for Claims Arising Out of Professional Services Performed for Related Entity Applies Only When Entities Were Related at Time Professional Services Rendered

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The United States District Court for the Northern District of Texas, applying Texas law, has held that the application of an exclusion that barred coverage for claims arising out of professional services that the insured had rendered to a related entity depended on the relation of the entities at the time the services were rendered rather than at the time the claim was made. *Phila. Indem. Ins. Co. v. Hallmark Claims Serv., Inc.*, 2008 WL 5191910 (N.D. Tex. Dec. 10, 2008).

An insurer issued a professional liability policy to a claims-handling company that was retained to handle the administration of a claim arising out of an automobile accident and was later sued for professional negligence in relation to its handling of the claim. The policy provided coverage for the claims-made period of November 20, 2002, to November 20, 2003. The policy excluded coverage for claims arising out of "any 'Professional Services' performed for any entity in which any 'Insured' is a principal, partner, officer, director or a more than three percent (3%) shareholder." The alleged negligence occurred in October 2002; the claim was first made against the insured in September 2003. In January 2003, the plaintiff in the underlying action against the claims-handling company became a wholly owned subsidiary of the insured's parent company. Thus, beginning in January 2003, the plaintiff and the insured claims-handling company shared numerous directors and officers.

The insurer moved for summary judgment and argued that the exclusion barred coverage for the underlying lawsuit because the insured and the plaintiff had overlapping directors and officers at the time the claim was made. The insurer argued that the use of the present tense in the exclusion "manifested [a] clear and unambiguous intent that the exclusion must be applied at the time the claim was made . . . ." The insurer further asserted that the claims-made nature of the policy required that the exclusion apply at the time the claim was made.

The insured claims-handling company argued that the court should examine the relation of the entities at the time the professional services were rendered to determine the applicability of the exclusion. Under this interpretation, the exclusion would not apply because the insured shared no directors or officers with the plaintiff at the time it rendered professional services for the plaintiff. The court agreed with the insured that this interpretation was, at a minimum, a reasonable interpretation of the exclusion. The court rejected the insurer's argument that the inclusion of a present tense verb indicated that application of the exclusion depended on the relation of the entities at the time the claim was made, particularly because the phrase "professional services performed" indicated an intent to examine the relation of the entities at the time the services were performed.

The court determined that the exclusion was "susceptible to more than one reasonable meaning, and [was] therefore ambiguous." Under Texas rules of policy interpretation, the court construed this ambiguity in favor of the insured and "look[ed] to the time professional services were rendered to determine if [the insured and the underlying plaintiff] had overlapping directors and officers." The insurer offered no evidence that the parties shared directors or officers at the time the professional services were rendered in 2002. The court therefore determined that the insurer had a duty to defend and denied the insurer's motion for summary judgment.