

Court Applies Exclusion for Claims Based Upon a Failure to Pay or Collect Money

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The California Court of Appeal, applying California law, has held that a policy exclusion for claims, losses or defense expenses "based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving . . . any actual or alleged commingling of, or inability or failure to pay, collect, safeguard or return any money" applied to a claim against an insurance agency that was accused of wrongfully retaining a commission for the policies it administered on behalf of two insurance companies. *GGIS Insurance Services, Inc. v. Superior Court*, 2008 WL 5179564 (Cal. App. Dec. 11, 2008).

The insurer issued an Insurance Agents and Brokers Professional Liability Policy to an insurance agency that marketed, underwrote and serviced automobile insurance policies in California on behalf of two auto insurers. The agency's contract with the auto insurers required the agency to collect the policy premiums, retain a portion for its services, then pay the remaining sums to the auto insurers. The auto insurers went bankrupt, and the Pennsylvania Insurance Commissioner sought the return of premiums that the insurance agency withheld from the auto insurers.

The court held that the exclusion barring coverage for any claims "based on, arising out of . . . in consequence of, or in any way involving" the insured's "failure to pay" any money absolved the insurer of any obligation to provide a defense to the insured. The court held that there was no potential for coverage because "[a]ll of the counts alleged in the commissioner's complaint . . . arise from the alleged failure to pay to the commissioner money due to the insurers." Accordingly, the court remanded the matter with instructions to grant the insurer's summary judgment motion in full.