

EPL Policy Does Not Cover Breach of Shareholder Agreement

May 24, 2007

The United States Court of Appeals for the Seventh Circuit has affirmed that an employment practices liability (EPL) policy does not provide coverage in connection with a lawsuit alleging that a company breached an oral modification to a shareholder agreement by the company's CFO. *Krueger Int'l v. Royal Indem. Co.*, 2007 WL 1040248 (7th Cir. Apr. 9, 2007).

The insurer issued an EPL policy to a company. The policy covered "loss" due to an "employment wrongful act."

Four former employees sued the company, alleging that the CFO had represented to them that the company would redeem their shares at the share value as assessed at the end of the third quarter if they resigned by the end of the year. The employees resigned in reliance on this representation, but the company did not exercise its option to buy back their shares until the next year had begun and used a lower share valuation at the end of the fourth quarter of the preceding year. The employees sued the company, and the underlying action resulted in a \$5.3 million judgment against the company, for which it sought indemnity from the EPL insurer. After the insurer denied coverage, the company filed the instant action.

The Seventh Circuit first determined that the underlying plaintiffs sought relief based on the alleged breach of the share redemption provision of the shareholder agreement, rather than a breach of their employment agreements with the insured. It therefore held that "[t]he breach of a shareholder agreement, whether oral or written, is not covered by insurance against employment practices liability."

The court then stated that the only possibility of coverage in light of this conclusion was for "coverage created by the provision insuring [the company] against losses resulting from misleading statements." The court held that coverage was also unavailable under this provision of the policy because the CFO had the authority to bind the company to his statements regarding valuation, and there was, thus, no misrepresentation or misleading statement.