

I v. I Exclusion Bars Coverage for Receiver's Suit against Insured Person Brought "on Behalf of" Insured Investment Firm

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The United States District Court for the Northern District of Illinois, applying Illinois law, has held that the insured vs. insured exclusion in a management and professional liability policy issued to an investment management firm precluded coverage for a lawsuit brought by the investment firm's court-appointed receiver against its co-founder, an insured person under the policy. *Oliver v. Indian Harbor Ins. Co.*, 2008 WL 565514 (N.D. Ill. Feb. 27, 2008).

The investment firm's court-appointed receiver filed an action against its co-founder alleging that the co-founder had abdicated his fiduciary duties by allowing his business partner to misappropriate client funds. The co-founder sought coverage for the lawsuit under the policy. When the insurer denied coverage based on the insured vs. insured exclusion, the co-founder filed a declaratory judgment action seeking coverage.

The court first examined the insured vs. insured exclusion, which precluded coverage for loss in connection with any claim "brought by, or on behalf of, or at the direction of any Insured." Finding the exclusion clear and unambiguous, the court explained that "the issue is not the wording of the policy, but how the Receiver Action is characterized." The court rejected the co-founder's argument that the receiver's lawsuit was brought "on behalf of" the investors and creditors of the insured company, rather than the company itself. Relying on *Scholes v. Lehman*, 56 F.3d 750 (7th Cir. 1995), the court held that the receiver's lawsuit was intended directly to benefit the insured investment firm and only indirectly benefit the investment firm's investors: "[T]he receiver is appointed to conserve and preserve the assets of the company, which, as a by-product, has the effect of benefiting both investors and creditors."

The court refused to consider the co-founder's contention that the purpose of the insured vs. insured exclusion was to avoid collusive claims. The court noted that once it "concludes that the plain language clearly excludes coverage, it need not consider the purpose of the exclusion." The court then granted the insurer summary judgment, concluding that coverage for the receiver's lawsuit was precluded by application of the insured vs. insured exclusion because it was brought against the co-founder, an insured person, "on behalf of" the investment firm, also an insured under the policy.