

Court Rejects Argument That Bodily Injury Exclusion in D&O Policy Bars Coverage

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The Maryland Court of Special Appeals has rejected an insurer's assertion that the bodily injury exclusion in a non-profit D&O policy barred coverage for a wrongful termination suit. *Philadelphia Indemnity Insurance Co. v. Maryland Yacht Club, Inc.*, No. 79 September Term, 1999, 1999 WL 1128846 (Md. Ct. Spec. App. Dec. 10, 1999).

A former employee of the insured club suffered an injury to his leg during the course of his employment. He allegedly began to receive workers' compensation benefits thereafter. According to the employee, the club learned that its workers' compensation premiums would increase significantly unless the employee were terminated. As a result, the club allegedly terminated his employment.

The insurer denied coverage based on the bodily injury exclusion, which barred coverage for any claim "arising out of, directly or indirectly resulting from or in consequence of, or in any way involving . . . [a]ny actual or alleged bodily injury. . . ." According to the insurer, but for the employee's injury, the wrongful termination claim would not have occurred.

The court concluded that the link between the injury and the wrongful termination claim was "too attenuated" and "ignore[d] common sense." The court further highlighted the insurer's promotional materials, which represented that claims for wrongful termination would be covered under the policy.

Additionally, the court reasoned that the insurer could exclude such claims far more directly if it intended to do so. Finally, it opined that, under the insurer's view, the availability of coverage for wrongful discharge claims under the policy would turn on the underlying facts, which would make coverage determinations "unwieldy."