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NEWSLETTER

Coverage Barred for Alleged Sexual Harassment by Corporate Officer

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An intermediate appellate court has held that an insurance company owed no defense to its corporate policyholder for a sexual harassment claim brought by the policyholder's employee in light of the policy's discrimination exclusion. *Midwestern Insurance Alliance, Inc., et al. v. Coffman, et al.*, No. 1998-CA-002408-MR, 1999 Ky. App. LEXIS 141 (Ky. Ct. App. Nov. 24, 1999).

A sexual harassment claim was brought against the sole owner, officer and director of a corporation by a former employee. The corporation's general liability insurer undertook the defense under a reservation of rights, and the insurer brought a declaratory judgment action seeking a determination that it had no duty to defend or to indemnify the corporation and its officer. In that regard, the policy barred coverage for damages arising out of various personnel practices, acts or omissions, including harassment.

The court determined that the discrimination exclusion was clear and unambiguous. The court found that the corporation's liability for the alleged harassment at issue was direct and not vicarious. Because the alleged offender was the sole owner, officer and director of the corporation, the court determined that the corporation was necessarily aware of, and approved the alleged harassment. Under the circumstances, the court held that the actions of the individual could not be separated from the actions of his corporation. The court noted, however, that the exclusion would also apply to vicarious liability because the exclusion was "perfectly clear" in excluding all damages arising out of sexual harassment. The court did not reach the issue of whether the complaint alleged conduct that by its very nature led to an inference of an intent to injure.