

No Coverage for Patent Infringement Claim Under Professional Liability Policy

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A Pennsylvania appellate court has held that no coverage existed under a professional liability policy for a patent infringement action brought against the insured by a party with which the insured had no professional relationship. *Transcore v. Caliber One Indem. Co.*, 2009 WL 1110649 (Pa. Super. Ct. Apr. 27 2009). In so holding, the court determined that the allegations in the underlying action were outside the scope of coverage afforded by a professional liability policy and that the underlying allegations fell within the scope of the policy's exclusion for willful violation of statute.

The insured, a company that supplied and installed transponders, was sued by a third party vendor that alleged that the insured had induced others into patent infringement by installing infringing technology. In response to a request for coverage, the insured's professional liability insurer concluded that the policy did not respond.

The appellate court concluded that the patent infringement action did not fall within the scope of coverage provided by the professional liability policy. According to the court, the action was brought by a third party vendor with "no relationship whatsoever" to the insured, let alone the requisite "professional relationship with the insured" necessary to fall within the coverage grant of the professional liability policy. The court also determined that coverage was foreclosed by a policy exclusion applying to "[a]ny claims arising out of knowingly non complying with federal, state and local statutes." The court noted that, under the operative federal statute, a claim for inducement of patent infringement required an intentional act, thus bringing the underlying action within the terms of the exclusion.