

RICO Claim Not Excluded By Breach of Contract or Benefits Due Exclusions

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The Pennsylvania Superior Court reversed a trial court decision and held that a breach of contract exclusion did not apply to alleged RICO violations that were based on healthcare insurers' alleged conspiracy to underpay claims. *Executive Risk Indem., Inc. v. CIGNA Corp.*, 976 A.2d 1170 (Pa. Super. Ct. June 3, 2009). The appellate court affirmed the lower court's ruling that contractual liability and benefits due exclusions barred coverage for the non-RICO claims and accordingly remanded the case for further proceedings to determine the allocation of the underlying settlement costs.

The insured, a managed care organization, was sued along with other managed care organizations in class action litigation alleging that the organizations had systematically underpaid claims submitted by medical care providers. The underlying litigation included claims for breach of contract and for RICO violations based on the healthcare insurers' purported conspiracy to underpay claims in violation of a contractual duty. The lawsuit settled, and the settlement agreement allowed class members to seek payment from the defendants based on a showing that they had submitted allegedly underpaid claims.

The insured's professional liability insurer denied coverage for the settlement based on two exclusions. The policy excluded coverage for "liability of the Assured under contract or agreement" and for "benefits, coverage, or amounts due or allegedly due . . . from the Assured as . . . an insurer or reinsurer, under any policy or contract" The trial court agreed with the insurer that these exclusions applied to both the RICO and breach of contract claims.

On appeal, the reviewing court agreed that the policy plainly barred coverage for the breach of contract claims. However, the court rejected trial court's conclusion that the same exclusions applied to the RICO claims because the RICO claims were based upon "the method of doing business [and] a claim that [the managed care organizations] engaged in a policy designed to short change the providers." As such, the RICO claims arose out of an alleged agreement among the defendants, which the court distinguished from the defendants' failure to fulfill a contractual duty to pay claims.

The court then stated that the "need for allocation is inextricably bound to the realization that the underlying claims contained both covered and excluded causes of action and that the excluded breach of contract claims do not overwhelm and render moot the RICO claims." The court therefore remanded the case to the

trial for an allocation of the settlement amount.