

No Coverage Based on Exclusion for Employment-Related Claims

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The United States Court of Appeals for the Ninth Circuit affirmed a trial court's grant of summary judgment in favor of an insurer that issued a business and management indemnity policy to a company that was sued by a putative class of employees alleging labor law violations. *Tricor Am., Inc. v. Ill. Union Ins. Co.*, 2009 WL 3602017 (9th Cir. Nov. 3, 2009). The insurer denied coverage based on an exclusion for claims "involving any employment or employment-related matters brought by or on behalf of . . . an applicant for employment with the Company or any of the Directors and Officers."

In affirming the lower court, the Ninth Circuit held that the exclusion "is plainly intended to broadly exclude coverage 'alleging, based on, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving' employment-related matters" The court rejected the company's argument that the exclusion should be read only to apply to lawsuits brought by applicants for employment, noting that the "exposure to [] lawsuits is likely to be greater from past, future, and current employees as opposed to mere applicants" and that specific reference to suits brought by applicants "was necessary to effectuate the complete exclusion of all employment-related lawsuits because the rejected applicants . . . do not fall within the definition of Directors and Officers."

The company also argued that to be a "Director and Officer," as that term was defined in the policy, an individual had to meet each of the definition's subparts because those subparts were linked by the word "and." In rejecting this argument, the Ninth Circuit noted that this reading "leads to absurd results . . . including no coverage for outside directors and the requirement that all 'duly elected directors and officers' must simultaneously serve in positions 'the functional equivalent of directors and officers' of a foreign" subsidiary of the company. As such, the court concluded that the word "and" in the definition of "Directors and Officers" must be read as "or" to "effectuate the mutual intent of the parties."