

Business Enterprise Exclusion Bars Coverage for Claim Arising Out of Services Provided By Lawyer's Insurance Agency

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The Court of Appeals of Ohio has held that coverage under a lawyers professional liability policy is precluded pursuant to the policy's business enterprise exclusion because the claim arose out of services provided by a lawyer's insurance agency. *Smith v. Ohio Bar Liab. Ins. Co.*, 2009 WL 4829998 (Ohio Ct. App. Dec. 16, 2009).

The insurer issued a professional liability insurance policy to a law firm. The policy provided that the insurer would "defend any Claim or suit against the Insured alleging such act, error, or omission and seeking damages which are payable under the terms of this policy[.]" The policy's business enterprise exclusion stated that the policy does not apply "to any Claim arising out of or in connection with the conduct or sale of any business enterprise not named in the Declarations . . . wholly or partly owned by an Insured or in which any Insured is a partner, or which is directly or indirectly controlled, operated or managed by an Insured" The policy's declarations named the law firm and the firm's two attorneys.

A lawyer at the insured firm also owned and operated an insurance agency. Clients of the lawyer's insurance agency purchased several annuities as investments. The lawyer, in his capacity at the law firm, created wills and trusts for the clients, at least some of which were funded with the annuities. The clients later became dissatisfied with the nature of the annuities and filed a lawsuit against the law firm, the lawyer, and the lawyer's insurance agency.

The insurer agreed to provide a defense in the underlying action subject to a reservation of rights. The insureds filed a lawsuit seeking a declaration of their rights under the policy. In the coverage litigation, the insureds asserted that the insurer's duty to defend was predicated solely upon whether the complaint stated a claim that potentially was within the policy's coverage. The insurer argued that, even if the underlying lawsuit stated a claim that fell within the policy's coverage as an initial matter, the business enterprise exclusion operated to bar coverage. The Court of Appeals agreed with the insurer, concluding that the policy's business enterprise exclusion precluded coverage for the underlying lawsuit.

In reaching this conclusion, the court interpreted the phrase "arising out of" to mean "flowing from" or "having its origin in." The court concluded that the claims asserted in the underlying suit arose out of the conduct of the insurance agency because the clients were suing based on their dissatisfaction with the nature of the annuities, and the legal work that the lawyer performed had its origin, at least temporally, in the annuity transaction. Accordingly, the court held that the business enterprise exclusion barred coverage for the underlying lawsuit.