

# "Officer-Shareholder" Exclusion In Crime Policy Bars Coverage For Embezzlement Scheme

---

September 2010

A United States District Court in Missouri, applying Missouri law, has held that an exclusion in a crime policy, barring coverage for any claim relating to the wrongful acts of an "Officer-Shareholder, whether acting alone or in collusion with others," applied to a claim alleging that an employee assisted and independently profited from the insureds' former president's embezzlement scheme. *Tactical Stop-Loss LLC v. Travelers Cas. & Sur. Co.*, 2010 WL 2802203 (W.D. Mo. June 14, 2010). The court also held that the duty to repay amounts transferred from client accounts to the insured's general operating account did not constitute "loss."

The insured companies were insurance company managing general agents that held certain funds related to their clients' insurance transactions in trust. The insureds' former president improperly transferred funds from the firm's general operating account to his own personal account and made-up the difference by transferring funds from the client trust accounts to the general operating account and between the client trust accounts. The insureds' COO was allegedly complicit in this scheme and received certain benefits in exchange for assisting to further this scheme.

The insureds were insured under a crime policy that provided specified coverage for money stolen by employees. The policy, however, barred coverage for "loss resulting directly or indirectly from any fraudulent, dishonest or criminal act committed by you, your natural person partners, any LLC Member or Officer-Shareholder, whether acting alone or in collusion with others . . . ." The policy defined "Officer-Shareholder" as "any officer who has a twenty-five percent (25%) or greater ownership interest in any one or more Insureds." The parties agreed that the former president was an "Officer-Shareholder."

The court first held that the Officer-Shareholder exclusion barred coverage. In so ruling, the court rejected the insureds' arguments that the Officer-Shareholder exclusion did not apply to the COO's participation in the scheme. Among other things, the insureds argued that the phrase "whether acting alone or in collusion with others" did not include collusion with employees. The court rejected this argument, explaining that this interpretation was inconsistent with the plain meaning of the exclusion's language and that the insureds' reading was nonsensical given that the actions of non-employees would not be covered under the policy in any event. The court, reasoning that the COO's involvement was limited to assisting the former president's

scheme and receiving benefits to further that scheme, held that the exclusion barred coverage.

The court also held that the insureds' obligation to repay amounts from the insureds' general operating account to the client trust accounts did not constitute "loss." The court reasoned that the insureds were always obligated to return trust funds to its clients and to pay certain liabilities from those trust accounts.