

Intentional Acts, Professional Services Exclusions Bar Coverage for RICO Suits

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The United States District Court in Colorado has held that an intentional acts exclusion barred coverage under a professional liability policy for claims against a policyholder's employees for violation of the Racketeer Influenced and Corrupt Organizations (RICO) Act. *Navigators Spec. Ins. Co. v. Beltman*, 2012 WL 5378750 (D. Colo. 2012). The court also held that the claims were not covered under a directors and officers liability policy due to the policy's exclusion of claims based on or arising from the provision of professional services.

In the underlying action, a large oil company alleged that the defendants, employees of the policyholder, participated in sham litigation against the oil company in Ecuador and orchestrated a conspiracy in violation of RICO in order to damage the company's reputation and force the company to pay off the defendants. The policyholder, an environmental research and consulting firm, sought coverage for these claims under its professional liability policy and directors and officers liability policy. The insurers sought declaratory judgments that the claims were not covered under the terms of their policies.

The policyholder argued that the claims against its employees were covered under the professional liability policy because the employees were "responsible insureds" under the policy and the plaintiff's complaint alleged facts that could support a claim for negligence, which was covered under the policy. Although the court agreed that the employees were "responsible insureds," the court held that the detailed factual allegations in the complaint, such as pressuring expert witnesses to inflate damage assessments, ghostwriting and falsifying expert reports, and engaging in a cover up scheme, alleged conduct falling within the policy's exclusion for "intentional acts based upon or arising out of a responsible insured's (1) dishonest, fraudulent, malicious or knowingly wrongful act, error or omission; or (2) willful or deliberate failure to comply with any material statute, regulation, ordinance, [etc.]." The court therefore held that the intentional acts exclusion barred coverage.

The policyholder also argued that the claims were covered under its directors and officers liability policy. However, that policy contained an exclusion for Claims "based upon, arising from, or in any way related to the rendering of, or failure to render, any professional services for others." The court determined that the allegations against the employees were premised on the defendants' provision of "various environmental consulting services" to the plaintiffs' attorneys in the Ecuadorian litigation. The defendants allegedly used the "professional jargon of their specialized field" to generate a convincing but fraudulent expert report, and

therefore were able to perpetrate the fraud precisely because of their professional status. Based on this analysis, the court held that the policy's professional services exclusion barred coverage for the oil company's claims.