

Bond Exclusion and Insured vs. Insured Exclusion Bar Coverage for Claims Against Property Management Company

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A California federal district court has held that a bond exclusion in a professional liability policy issued to a property management company and the insured vs. insured exclusion in a professional liability policy issued to the homeowner's association that employed the property manager unambiguously barred coverage for claims asserted against the property manager arising out of its alleged failure to secure extensions of two surety bonds relating to construction work performed on property owned by the association. *VierraMoore, Inc. v. Cont'l Cas.Co.*, No. 2:12-cv-01926-MCE-EFB (E.D. Cal. Apr. 15, 2013). Wiley Rein represented the insurer.

The insured, a property management firm, was named as a defendant in a California superior court action brought by a community association alleging that the property manager negligently failed to secure extensions of two surety bonds that were issued in connection with construction work performed on property owned by the association. The insured tendered the claim to its insurer under both a professional liability policy issued to the property manager and a professional liability policy issued to the association. The insurer denied coverage under the property manager policy on the ground that, among other things, the policy contained a bond exclusion that barred coverage for any claim "based upon, directly or indirectly arising out of, or in any way involving the failure to effect or maintain any insurance or bond, or to any failure to cover certain perils or to purchase an adequate amount or type of insurance." The insurer denied coverage under the association policy on the ground that the association policy contained two insured vs. insured exclusions that barred coverage for claims brought by or derivatively on behalf of the association. Notwithstanding the insurer's position that neither policy afforded coverage for the association's claim, the insurer contributed to the settlement of the underlying action on the property manager's behalf subject to a full reservation of rights, including an express reservation of the right of recoupment.

After the insured instituted a coverage action, the court granted summary judgment to the insurer under both policies. With regard to the bond exclusion, the court held that the exclusion unambiguously barred coverage for loss in connection with "any claim" that "in any way involv[ed] the failure to effect or maintain any insurance or bond" regardless of the theory of liability alleged by the underlying claimant. The court rejected the property manager's attempts to limit the broad language of the exclusion based on the property manager's alleged, subjective intent or a narrower construction of the exclusion that was inconsistent with its

plain language. With regard to the insured vs. insured exclusions, the property manager did not dispute that they applied, but argued that the insurer had waived or forfeited the right to rely upon them when it defended the association's former directors against a cross-complaint brought by the property manager. The court rejected this argument, however, reasoning that the insured vs. insured exclusions did not bar coverage for the property manager's cross-complaint against the directors because the cross-complaint was not brought by or derivatively on behalf of the association. Noting that the insurer had contributed to the settlement of the underlying action subject to a full reservation of rights and that the property manager did not dispute the insurer's right to recoupment, the court ordered the property manager to reimburse the insurer for the amount that it had contributed to the settlement of the underlying action.