

# Court Looks Outside Underlying Pleadings to Hold That Criminal Conduct Exclusion Barred Coverage for Misrepresentation

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The United States District Court for the Southern District of Florida has held that a fraudulent, dishonest and criminal conduct exclusion barred coverage for civil claims filed against an insurance agent when the agent was adjudicated guilty of grand theft and insurance fraud based on the same criminal scheme upon which the civil actions were based. *Certain Interested Underwriters at Lloyd's, London v. AXA Equitable Life Ins. Co.*, 2013 WL 3070885(S.D. Fla. June 18, 2013). In addition, the court held that it was proper to look outside the pleadings in the civil actions to determine whether the insurer had a duty to defend because the operative facts impacting coverage were easily verified and because those facts would not be resolved by the underlying litigation.

The policyholder, an insurance agent, was insured under an insurance professionals E&O policy. After it became known that the insurance agent was involved in an illegal, stranger-originated life insurance scheme, a life insurance company sued the insured insurance agent, alleging that he made false representations in agent certificates provided to the life insurer. In addition, a trust sued the insured life insurance agent after certain life insurance policies it had purchased were rescinded because of the insured's alleged misrepresentations. The insured was also criminally charged with and pleaded guilty to multiple counts of insurance fraud and grand theft, for which a court adjudicated him guilty.

In ruling on a motion for summary judgment in a subsequent coverage action, the court held that the policy's criminal conduct exclusion barred coverage for the claims. After noting that an insurer's duty to defend is ordinarily governed by the allegations of the complaint, the court opined that it was proper to consider the facts of the underlying criminal case in order to determine whether the insurer had a duty to defend the two civil actions. The court reasoned that when the duty to defend hinges on facts that are easily verified and that will not be resolved by the underlying litigation, a court may properly consider facts outside the underlying pleadings.

The court also ruled that the policy's exclusion for "any Claim . . . directly or indirectly involving . . . [c]onduct which is fraudulent, dishonest, [or] criminal" when "there is a finding or adjudication in any proceeding of such conduct" barred coverage for the suits. After comparing the criminal charges and the allegations in the

underlying civil actions, the court found "it clear from the record that the claims against [the insured] in the underlying cases arise from the exact same misrepresentations that [the insured was] convicted of committing." As a result, the court held that the insurer owed no duty to defend or to indemnify the policyholder in the underlying litigation.