

Criminal Conduct Exclusion Bars Coverage for Broker's Falsification of Insurance Policy Applications

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Applying Florida law, the United States District Court for the Southern District of Florida has held that a criminal conduct exclusion bars coverage for a claim against an insurance broker who pled guilty to insurance fraud. *Certain Interested Underwriters at Lloyds, London v. AXA Equitable Life Ins. Co.*, 2013 WL 5948107 (S.D. Fla. Nov. 7, 2013).

An independent insurance broker completed a life insurance policy application for a client and answered "no" to a question in the application regarding whether the client intended to use the policy as any type of pre-death financial investment. The broker, however, routinely falsified insurance applications to induce insurers to issue policies that later would be sold on the secondary market as investments. The state of Florida brought a criminal proceeding against the broker, and he ultimately pled guilty to multiple counts of insurance fraud. Meanwhile, a client on behalf of whom the broker had submitted a false application brought suit against the broker. The broker settled the claim and assigned to the client his rights under his E&O insurance policy.

In the subsequent coverage action, the broker's insurer moved for summary judgment, arguing first that the client's claim did not allege "professional services," which was defined in the policy as "the marketing, sale or servicing of insurance products." The insurer contended that the broker was selling investment products, not insurance products. The court found that, although this argument was plausible, the record was undeveloped on this issue and thus summary judgment for the insurer was not appropriate on this basis.

Next, the insurer argued that the claim was barred by an exclusion for "[f]alsification of any offer of an insurance contract or document, including but not limited to quotes, binders, indications or policies." The insurer contended that the term "document" encompasses all written or printed information related to the sale of insurance, including policy applications. The claimant asserted that "document" is narrowed by the other words in the exclusion to mean only information emanating from the insurer that identified significant aspects of the proposed coverage, like a quote or a binder. The court found that both interpretations were reasonable and, therefore, the provision was ambiguous. As such, the court construed the exclusion against the insurer and held that it did not bar coverage for the claim.

Finally, the insurer contended that coverage was precluded by the policy's exclusion for "[c]onduct which is fraudulent, dishonest, criminal, willful, malicious, intentionally or knowingly willful, or otherwise intended to cause damage or injury to personal property" in the event of a final adjudication of such conduct or an admission by the insured. According to the insurer, the broker's guilty plea and the judgment entered by the criminal court established that he had committed fraud by falsifying insurance applications. The court agreed and held that the criminal conduct exclusion barred coverage for the claim. Accordingly, the court granted the insurer's motion for summary judgment.