

No Coverage Under E&O Policy for Claim for Tortious Interference

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The United States Court of Appeals for the Sixth Circuit has held that coverage is not available under a policy providing coverage for claims alleging “negligent act[s], error[s] or omission[s]” for a claim alleging only intentional conduct. *Szura & Co., Inc. v. Gen. Ins. Co. of Am.*, 2013 WL 5912062 (6th Cir. Nov. 5, 2013).

The insured, an insurance brokerage firm, hired an agent who had worked at a competing firm. While employed at the competing firm, the agent had signed a confidentiality agreement. After hiring the agent, the insured was sued for tortiously interfering with the competing firm's business relationships and with the confidentiality agreement. The insured reported the suit to its E&O insurer, which denied coverage. In the ensuing coverage litigation, the court held that the policy only afforded coverage for claims alleging negligent conduct, and this suit alleged only intentional conduct.

The policy afforded coverage for specified wrongful acts, defined in relevant part as “any actual or alleged negligent act, error or omission.” The court held that this phrasing did not encompass intentional conduct. Thus, the relevant inquiry, according to the court, was whether the underlying allegations “sound[ed] in negligence.” The complaint included counts for tortious interference with a contract, tortious interference with business relationships, and conspiracy to interfere with contract rights and business relationships. These counts required proof that the insured acted intentionally or maliciously. Additionally, the complaint alleged that the insured “intentionally” and “improperly” interfered with the contract, which the court read as an allegation of intentional conduct.