

Allegations of Violations of the California Labor Code Fall Outside the Definition of “Loss” Under Policy

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The Superior Court of California, San Diego County, has held that a policy's wage, hour, and payroll policies exclusion precludes coverage for a claim based on violations of the California Labor Code. *M Bar C Constr. Inc. v. Continental Cas. Co. Inc.*, No. 37-2012-00088258-CU-IC-CTL07-P-1180 (Cal. Super. Ct. Jan. 3, 2014). The court also held that the claim fell within categories that were carved out of the definition of “loss.” Wiley Rein represented the insurer.

The policyholder sued, seeking coverage under a liability insurance policy for a putative class action complaint brought against the policyholder on behalf of a class of former employees alleging violations of the California Labor Code. The insurer moved for summary judgment on the grounds that the policy's “wage, hour and payroll policies” exclusion barred coverage and that the underlying claim did not seek covered “loss.” The “wage, hour and payroll policies” exclusion provided that “[t]he Insurer shall not be liable to pay any Loss under this Coverage Part in connection with any Claim made against any Insured: [¶] ... [¶] b. based upon or arising out of any actual or alleged violation of: the Fair Labor Standards Act (except the Equal Pay Act), as amended, or any other federal, state or local statutory law or common law anywhere in the world.”

The court agreed with the insurer that the policy's “wage, hour and payroll policies” exclusion clearly excluded violations of the California Labor Code. The court further ruled that because an exclusion applied, it need not address a bad faith claim against the insurer or the issue whether any categories of relief sought qualified as a “loss” within the meaning of the policy. However, without providing its analysis, the court found that all of the relief sought in the underlying action fell within categories that were carved out of the definition of “loss” and that the “genuine dispute doctrine” warranted summary judgment in favor of the insurer with respect to the bad faith claim.