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NEWSLETTER

Policyholder's Bankruptcy Does Not Relieve Insurer's Obligations for "Loss"

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The Court of Appeals of Wisconsin, applying Wisconsin law, has held that a policyholder's bankruptcy did not relieve an insurer of its obligations to pay for "loss" under a policy endorsement that included a bankruptcy provision. *Hollingsworth v. Landing Condos. of Waukesha Ass'n, Inc.*, 2014 WL 839244 (Wis. Ct. App. Mar. 5, 2014).

Individual condominium owners sued a condo association's directors for breach of their fiduciary duties. The directors filed for bankruptcy protection and were dismissed from the lawsuit. The association sought insurance coverage under a CGL policy that included an endorsement affording coverage for "loss" arising from the wrongful acts of its directors and officers. The endorsement also provided that the bankruptcy of an insured would not relieve the insurer of its obligations under the policy. The insurer sought and obtained a declaratory judgment in the trial court, which ruled there was no coverage because the directors could no longer incur personal liability to trigger "loss" under the endorsement given their dismissal from the underlying suit. Although the trial court acknowledged that "there may be coverage under the policy," it rejected the owners' motion for reconsideration because it found "no methodology for [the directors] to be held liable."

The owners appealed, arguing that the endorsement's bankruptcy provision preserved coverage. The Wisconsin appellate court agreed. It rejected the insurer's argument that the dismissal of the directors nullified coverage because without their legal liability to pay there could be no "loss" under the policy. The court reasoned that to deny coverage would render the bankruptcy provision "meaningless." It added that, by issuing the endorsement with the bankruptcy provision, the insurer "plainly agreed that its obligations would remain" in the event that the directors "would be obligated to pay due to a legal liability but instead sought bankruptcy protection." Taking into account the "reasonable expectations of the insured" and construing the policy "against the insurer that drafted it," the court found that the "bankruptcy provision derails any argument . . . that the directors' claimed insolvency absolves [the insurer's] obligation."