

# Loss Due to Theft Not Covered under E&O Policy

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Florida's District Court of Appeal, applying Florida law, has held that the theft of airline ticketing forms from a travel agency did not implicate an E&O insurer's duty to defend or indemnify because the loss was not caused by the negligence of the insured agency. *Jeb Travel, Inc. v. Connecticut Indem. Co.*, 2005 WL 475521 (Fla. Dist. Ct. App. Mar. 2, 2005).

The insurer issued an E&O policy to a travel agency. The policy provided coverage for damages due to "any negligent act, error or omission" of the insured "in the conduct of 'travel agency operations' by the 'named insured.'" Numerous "automated ticket boarding forms," which were used by the travel agency to furnish tickets to its clients, were stolen from the travel agency. The travel agency received these forms from the Airline Reporting Corporation (ARC), an association of airlines, which both collected funds from travel agencies and distributed the proceeds to the agencies. After the theft, ARC determined that the travel agency had failed to use reasonable care in safeguarding the ticket forms and declined to cover or defend the travel agency against the airlines' demands for payment. The travel agency paid the claims and sought indemnification from the insurer. The insurer declined to indemnify the agency for amounts in excess of a policy endorsement providing \$50,000 in coverage for any claims arising from the travel agency's agreement with ARC, regardless of negligence or fault.

The appellate court affirmed the trial court's conclusion that the insurer owed no duty to defend or indemnify the agency above the \$50,000 provided by the endorsement. Noting that the ARC's determination of negligence was not relevant to the issue of insurance coverage, the court held that the airlines' claims were not covered because they were "a consequence of the theft," which was a "fortuitous event," and not caused by "any negligent act, error or omission of the insured."

For more information, please contact us at 202.719.7130.