

Terms "Arising Out Of" and "Resulting From" Are Unambiguous

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The United States Court of Appeals for the Ninth Circuit, applying Montana law, has held that a policy exclusion in a property manager's errors and omissions liability policy for claims "arising out of, directly or indirectly resulting from or in consequence (sic) of, or in any way involving" the return of a security deposit to a tenant unambiguously precludes coverage for a tenant's claims against the insured. *The Apartment Store v. Mount Vernon Fire Ins.*, 2005 WL 1154487 (9th Cir. May 17, 2005).

This insurance coverage dispute stems from a lawsuit between a commercial landlord and tenant. The complaint in the underlying suit alleged that the landlord failed to supply its tenant with a cleaning notice, failed to properly deduct record deductions on the "move-out cost list," altered the dates on the security deposit disposition sheet and incorporated improper provisions in its lease that rendered part of the security deposit non-refundable. The insurer argued that all of these claims involved the return of the security deposit, and thus that the entire suit was excluded under the policy language quoted above. The landlord countered that the exclusion for claims "arising out of" or "resulting from" the return of the security deposit was ambiguous under Montana law. The policyholder therefore asserted that the exclusion could serve only to bar coverage for claims specifically alleging "the wrongful withholding of the security deposit."

The court disagreed with the landlord. While noting that under Montana law, the terms "arising out of" and "resulting from" are deemed ambiguous when standing alone, the court concluded that the additional language in this policy's exclusion clarified the parties' intent. Thus, the court held that the exclusion was not susceptible to any reasonable interpretation other than that it was meant to preclude coverage for any claim involving the return of a tenant's security deposit. Since all of the allegations in the underlying complaint involved the return of the tenant's security deposit, the court held that the insurer had no duty to defend or indemnify the policyholder with respect to the underlying suit.

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