

Insurer Properly Denied Coverage to Title Broker for Civil Actions in Light of Criminal Fraud Conviction

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The United States District Court for the Eastern District of Arkansas has ruled that the dishonesty, handling-of-funds and known wrongful acts exclusions in a Real Estate Professional Services Liability Policy barred coverage for suits stemming from a title broker's misappropriation of escrow funds. *St. Paul Fire & Marine Ins. Co. v. Global Title Co., Inc.*, 2006 WL 2947644 (E.D. Ark. 2006).

The insurer issued the title broker a Real Estate Professional Services Liability Protection Policy with a policy period of May 24, 2004 to May 24, 2005. The policy provided coverage for "amounts any protected person is legally required to pay as damages for covered loss" resulting "from real estate professional services" and caused by a "wrongful act."

The policy contained exclusions for "Criminal, Dishonest or Fraudulent Wrongful Acts or Knowing Violations of the Rights or Laws," "Handling of Funds," and "Known Wrongful Acts." The dishonesty exclusion excluded coverage for "loss that results from any criminal, dishonest, or fraudulent wrongful act or any knowing violation of rights or laws" provided that "it has been determined that such criminal, dishonest, or fraudulent wrongful act... was committed." The handling-of-funds exclusion barred coverage for loss resulting from "[a]ny unauthorized act committed by any protected person that deprives an owner of the use of their funds," "[a]ny unauthorized use of funds by any protected person," "[m]ixing client-funds with any protected person's funds," or "[t]he failure of any protected person to properly account for funds." The known wrongful act exclusion precluded coverage for any loss resulting "from any wrongful act... that any protected person knew about before the beginning date... [of] this professional services liability protection."

The title broker was sued in three different underlying actions alleging that she had used funds that were deposited in escrow for her own personal benefit. Additionally, because the title broker acted through the mail, the federal government brought criminal charges for violation of mail fraud and tax laws based upon her misappropriation of funds. The title broker waived formal indictment and entered a guilty plea to the criminal charges. The insurer then brought this coverage action asserting that it was not obligated to provide a defense or indemnity for the underlying actions based upon the policy exclusions.

The court agreed with the insurer that coverage was barred. According to the court, the criminal conviction established that the title broker had committed the acts for which she was being sued, so the dishonesty exclusion barred coverage. The court then ruled that the other two exclusions provided additional bases for holding that no coverage was available. The court noted that the handling-of-funds exclusion barred coverage because it generally excludes coverage for all commingling or misappropriation of funds. The court also noted that the known wrongful acts exclusion would bar coverage, presumably because, as noted by the court in its factual summary, the alleged misappropriations predated the policy period.