

E&O Policy Covers Complaint Against Entity Even Though Policy Applies Only to Liability Arising Out of Acts of Natural Persons

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In an unpublished opinion, the United States District Court for the Eastern District of Pennsylvania, applying Pennsylvania law, has held that an insurer has a duty to defend a company under an E&O policy even though the policy provided coverage only for liability arising out of a "natural person" providing services and the complaint did not name a natural person as a defendant.

The court reasoned that the liability of the company necessarily arose out of actions of individuals. *The Patriot Group v. Columbia Cas. Co.*, 2005 WL 2039047 (E.D. Penn. Aug. 23, 2005).

The insurer issued an E&O policy to a company in the business of selling life insurance and annuity products. The policy provided coverage for the defense of "any corporation, partnership, or other business entity owned and controlled by [an agent or general agent], but only with respect to the liability of such entity as it arises out of such natural person rendering or failing to render Professional Services."

The company was named as a defendant in a lawsuit alleging a fraudulent living trusts and annuities scheme, violations of RICO, fraudulent and negligent misrepresentations, breach of contract, breach of fiduciary duty and consumer protection law violations. The complaint did not name any agent or general agent as a defendant. After the president of the company tendered the complaints to the insurer, the insurer denied coverage, stating that the complaints did not allege any "rendering or failing to render Professional Services" by the president of the company. The insured filed a declaratory judgment action against the insurer.

The court noted that the parties did not dispute that the president of the insured company is an insured agent or general agent under the policy, or that the insured company is owned and controlled by the president. Because the policy provides coverage for "Professional Services," defined as "the sale, attempted sale, or servicing of certain investment vehicles, including annuities," the court stated that coverage would extend to the company for any lawsuits in which the alleged liability is causally connected to the president's engaging or failing to engage in the sale, attempted sale or servicing of certain investment vehicles, including annuities.

The court explained that, because corporate liability can be based upon actions of corporate officers, the actions of the president formed the basis of liability imposed on the insured company. The court thus stated that the insured company's liability "potentially flows from [the president's] actions." The court also reasoned that, since the complaint alleged that the company had "engaged in the sale of annuities to plaintiffs," the president can thus "not be excluded as an individual who sold or attempted to sell the relevant annuities on behalf of [the company]." Finally, the court stated that, even if the president did not directly sell the annuities, the policy still afforded coverage because the president might have been responsible for implementing and overseeing the scheme.

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