

PRESS RELEASE

WRF Secures Victory for Insurance Client as Court Holds D&O Policy Does Not Provide Coverage for Breach of Contract Claims

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Washington, DC—In a victory for a Wiley Rein & Fielding insurance client, the United States District Court for the Southern District of Florida has held that a directors and officers liability policy does not provide coverage for breach of contract claims against the insured company. The court held that the terms of the insuring agreement did not encompass coverage for such claims, relying on the policy's terms and relevant public policy. See *Waste Corp. of America, Inc. v. Genesis Ins. Co.*, No. 03-61480 (S.D. Fla. Aug. 5, 2005).

The underlying lawsuit involved the policyholder's acquisition of two businesses from three individuals for a cash payment as well as future royalty payments. In 2001, the three sellers sued the policyholder and alleged that it had breached the terms of the purchase agreement by failing to allow them to manage the day-to-day operations of the business. The lawsuit alleged breach of contract, fraud and negligent misrepresentation. After two of the sellers settled their claims against the policyholder, the third seller proceeded to trial, which resulted in a \$3 million verdict in his favor on the breach of contract count. The policyholder settled with the plaintiff post-verdict and subsequently brought suit against the insurer, seeking coverage for that settlement.

The court granted summary judgment in favor of the insurer, holding that both Texas and Florida law precluded coverage under the D&O policy for breach of contract damages. The court based its conclusion on the policy's language, determining that the insured had not sustained a "Loss" arising from a "Wrongful Act" as required by the policy's terms. In so concluding, the court distinguished between

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“legal” obligations imposed by tort law and contract obligations voluntarily undertaken by the insured. The court further observed that this result was consistent with the “strong public policy” articulated by a variety of courts against allowing coverage under liability policies for acts within the insured’s control.

Wiley Rein & Fielding attorneys Jason P. Cronin and Cara Tseng Duffield handled the case for Genesis Insurance Company.