

ALERT

Mobile Content Charges "Involve" Content Provider's Product and Trigger Products Exclusion

February 23, 2011

The Eighth Circuit has held that there is no coverage for a claim against a mobile content provider alleging unauthorized mobile content charges due to an exclusion precluding coverage for claims "in any way involving" the provider's products. *W3i Mobile, LLC v. Westchester Fire Ins. Co.*, 2011 WL 500213 (8th Cir. Feb. 15, 2011). The court also declined to expand the doctrine of reasonable expectations due to the unambiguous language of the exclusion and the sophistication of the policyholder.

A mobile content provider purchased a business and management indemnity policy that contained an exclusion for "any Claim . . . alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving . . . any goods or products manufactured, produced, processed, packaged, sold, marketed, distributed, advertised or developed by" the policyholder. Subsequently, cellular telephone users brought two class actions against the insured provider alleging that the provider had billed for unauthorized mobile content in violation of various state consumer protection statutes and common law. The insurer denied coverage based on the products exclusion. The provider then filed a breach of contract and a declaratory judgment action in federal district court, where the court granted summary judgment in favor of the insurer.

The Eighth Circuit affirmed based on the exclusion's plain language. The court determined that the underlying claims, whether they alleged erroneous billing for mobile content the customers never received or billing for mobile content without proper customer

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authorization, at the very least "involved" the provider's mobile content, which the court stated was indisputably the insured's product. The court rejected the provider's argument that the underlying claims were billing disputes unaffected by the exclusion, concluding that such a narrow interpretation of the exclusion would require the court to ignore the exclusion's "in any way involving" clause. The court further explained that the phrase "in any way" incorporates all reasonable definitions of the word "involving," including those not requiring a causal connection. Finally, the court declined to apply the doctrine of reasonable expectations as urged by the insured, stating that the doctrine "was a tool for resolving ambiguity and for correcting extreme situations" that did not apply to an unambiguous exclusion in a "commercial insurance policy purchased by experienced business people."