

ALERT

Bodily Injury Exclusion Precludes Coverage for Professional Negligence Claim Arising Out of Automobile Accident

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A federal district court, applying Florida law, has held that a policy's bodily injury exclusion precluded coverage for a professional negligence claim stemming from a deadly automobile accident. *James River Ins. Co. v. KV Carrier Servs., Inc.*, 2011 WL 1079427 (S.D. Ga. Mar. 22, 2011).

The insurer filed a declaratory judgment action in connection with an accident involving a tractor-trailer that resulted in the death of the underlying claimant's husband. In the underlying suit, the claimant alleged that the driver of tractor-trailer had 13 moving violations before the accident, and therefore should not have been hired as a driver by its employer. The claimant further alleged that the negligence of the insured in performing its duties, which were to make recommendations and provide services designed to keep the employer in compliance with Department of Transportation regulations, resulted in the driver's employment. The insurer denied coverage, relying on its policy's exclusion for claims "[b]ased on or directly or indirectly arising out of any actual or alleged 'bodily injury' to or sickness, disease or death of any person," and commenced a declaratory judgment action against the insured and the underlying claimant.

The court first denied the claimant's argument that the declaratory judgment action was not ripe because the insured's liability had not yet been established. The court rejected the argument, noting that the United States Court of Appeals for the Eleventh Circuit has recognized that it is within the district court's discretion to entertain a declaratory judgment action in such circumstances. Rejecting the notion that it

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would be issuing an advisory opinion, the court explained that there was an actual controversy between the parties as to whether the underlying claim against the insured was covered under the policy.

Turning to the coverage argument, the court concluded that the term “arising out of” in the bodily injury exclusion was unambiguous and had a broad scope, so that it precluded coverage for the lawsuit brought against the insured. In so doing, the court noted that “it is difficult to see how [the underlying claimant’s] claim does not have its origin in or a connection with a claim for bodily injury. The clear and unambiguous terms of the policy just do not cover claims where the damages sought are the result of bodily injury.”