

ALERT

E&O Policy Provides No Coverage for Lawsuit Alleging That Insurance Agent Failed to Purchase Adequate Insurance for Himself

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Applying Arizona law, a federal district court has held that an E&O policy does not provide coverage for a professional negligence claim brought by an insurance agent against an insurance agency for failure to properly advise him as to the adequacy of his liability coverage where the insurance agent himself was an insured under the policy and the insurance agent sold himself the liability policies at issue. *White v. Arch Ins. Co.*, 2011 WL 2680323 (D. Ariz. July 8, 2011).

An insurance agent and his friend were involved in a jet ski accident in Mexico that caused serious injuries to the friend and required medical treatment. The friend ultimately sued the insurance agent for personal injury. The insurance agent then sought coverage under certain liability policies sold to him by the insurance agency that he worked for. After the insurance agent was informed that none of the liability policies provided coverage for the personal injury claim, he filed a professional negligence claim against the insurance agency, alleging that the agency failed to sell him a policy providing appropriate coverage. The E&O insurer for the insurance agency was notified of the professional negligence claim, but denied coverage. The friend and the insurance agent subsequently settled the personal injury lawsuit, and the insurance agent, individually and on behalf of the insurance agency, assigned to the friend all causes of action against their E&O insurer. The plaintiff then filed a lawsuit against the E&O insurer, asserting breach of contract and bad faith claims against the insurer for its refusal to defend and indemnify the insurance agency against the insurance agent's professional

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negligence claim.

Rejecting the breach of contract and bad faith claims, the court first noted that the insurance agency and the insurance agent were both insureds under the policy. Recognizing that the insurance agent sold himself the liability policies, the court explained that any negligent advice given to the insurance agent by the insurance agency was actually given through the agent himself. The court then explained that the E&O policy expressly covered “any negligent act, error or omission of the INSURED . . . in rendering or failing to render PROFESSIONAL SERVICES for others” Because the insurance agent did not negligently render or fail to render professional services for others (but did so only for himself), the court concluded that the E&O policy did not provide coverage for the insurance agent’s professional negligence claim against the insurance agency.

Moreover, the court reasoned that even if the insurance agent had advised and sold insurance to a third party rather than himself, he was not negligent. The court noted that the breach of contract and bad faith lawsuit did not allege that the insurance agent had mishandled an application for insurance or failed to timely forward a premium to the insured, but, rather, the lawsuit alleged that the insurance agent failed to assume responsibility, without any request from the insured, for advising whether the liability policies provided coverage for bodily injury caused to another while using a rented jet ski in Mexico.

In further support of its holding, the court stated that when this case is backed out of the settlement agreement and assignment of the insurance agent’s claim to his friend, “it is a bare lawsuit by [the insurance agent] against [himself] for not buying his own insurance.” Because “[t]he law recognizes no liability of [the insurance agent] to himself and gives no remedy to it,” the court concluded that the E&O policy did not provide coverage for the professional negligence claim against the insurance agency. Accordingly, the court held that there was no breach of contract and no bad faith denial of coverage by the E&O insurer.