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ALERT

Defined "Financial Products" Coverage Does Not Apply To Preparation of Allegedly Fraudulent Workers' Compensation Applications

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Applying Maryland law, a federal district court has held that an insurer had no duty to defend a claim by a state agency that alleged that the insured accounting firm had assisted its clients in committing workers' compensation fraud because the applicable policy excluded coverage for claims based on products other than "financial products," which, as defined by the policy, did not include workers' compensation applications. *Md. Accounting Servs. v. Cont'l Cas. Co.*, 2011 WL 5853906 (D. Md. Nov. 21, 2011). Wiley Rein LLP represented the insurer.

A state workers' compensation insurer filed suit against the policyholder, an accounting firm, alleging that the firm had either negligently or intentionally provided advice and services that allowed its clients to defraud the agency of over $1 million in premiums. The firm tendered the suit to its insurer under a business insurance policy, and the insurer declined coverage.

The policy covered claims arising out of the rendering of professional services. The parties disputed whether preparation of workers' compensation applications qualified as professional services under the applicable policy definition. However, the court found it unnecessary to decide that issue. Rather, the court applied a financial products exclusion that barred coverage for any claim based on or arising out of "servicing or providing advice on any products that are not financial products." The policy defined "financial products" to include a small group of items, including

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treasury bonds, mutual funds, and variable life insurance contracts.

The court concluded that workers' compensation insurance policies "are not included in this exclusive group." Accordingly, the court held that the allegations of the underlying complaint were in connection with services specifically excluded from the scope of the policy. The court accordingly granted the insurer's motion for summary judgment that it had no duty to defend or indemnify the firm in connection with the underlying claim.