

ALERT

I-v-I Exclusion Held Not to Preclude Coverage for Claims Brought By Chapter 7 Trustee

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The United States Bankruptcy Court for the Western District of Louisiana has held that an insured versus insured exclusion does not apply to preclude coverage for claims brought by a duly appointed bankruptcy trustee against an insolvent corporation's directors and officers. *Central Louisiana Grain Cooperative v. Vanderlick*, 2012 WL 293173 (Bankr. W.D. La. Jan. 31, 2012).

The insurer issued a directors and officers liability policy to the insured, a Louisiana agricultural cooperative association. The insured filed for relief under Chapter 7 of the Bankruptcy Code, and a trustee of the bankruptcy estate was appointed. The bankruptcy trustee commenced a proceeding against several of the insured's former directors and officers, alleging breaches of various fiduciary duties. The trustee also named the insurer as a defendant in the action under Louisiana's direct action statute. The insurer moved for summary judgment, contending that coverage for the action was precluded by the policy's insured versus insured exclusion. The policy excluded coverage for any claim made against the insureds "by, on behalf of, or in the right of the Insured Entity in any capacity." The policy defined "Insured Entity" to include the insured corporation and its subsidiaries.

The court held that the insured versus insured exclusion did not operate to bar coverage. According to the court, the trustee acts on behalf of the bankruptcy estate and not on behalf of the insured entity in discharging his duties under the bankruptcy code. As such, the court concluded that the claims brought by the trustee do not fall within the confines of the exclusion because the trustee "is a distinct legal entity with different duties and functions, and the language of the exclusion does not sweep the trustee into the definition of 'Insured

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Entity.” In so holding, the court noted that claims brought by a duly appointed bankruptcy trustee do not present the potential for collusion that it viewed as underlying the insured versus insured exclusion. Finally, the court rejected the insurer’s contention that the exclusion applied because the trustee’s claims were brought “in the right of” the insured entity. The court determined that the insured entity had no rights or ownership interests in the trustee’s claims because they were brought solely on behalf of the bankruptcy estate.