

ARTICLE

Insured vs. Insured Exclusion Bars Coverage For FDIC Failed Bank Suit

August 28, 2013

A Georgia federal trial court has held that an insured versus insured exclusion bars coverage for the FDIC's suit against former officers of a failed bank. *St. Paul Mercury Ins. Co. v. Miller*, No. 12-cv-225, 2013 WL 4482520 (N.D. Ga. Aug. 19, 2013).

After the FDIC took over the failed Community Bank & Trust of Cornelia, Georgia, it filed suit against two former officers in connection with their role in approval of loans. After agreeing to provide a defense under reservation of rights, the carrier filed a declaratory judgment action against the individuals and the FDIC. The policy contained an exclusion that barred coverage for Claims "brought or maintained by or on behalf of any Insured or Company in any capacity," with certain exceptions. The carrier filed a motion for summary judgment based on the terms of the exclusion, and the FDIC filed a motion seeking discovery regarding the interpretation of the exclusion.

The court denied the FDIC's discovery motion. Under Georgia law, the court observed, if the policy was ambiguous, the court was required to interpret it in favor of coverage. Accordingly, whether or not the policy was ambiguous, discovery was unnecessary.

The court further held that the policy's insured versus insured exclusion barred coverage for the FDIC's suit. The court found that by operation of federal law as interpreted by the Supreme Court, the FDIC had stepped into the shoes of the failed bank such that the FDIC was an "insured" for purposes of the exclusion. To rule otherwise, the court observed, would be to ignore exclusion's use of the phrase "on behalf of," which in almost any conceivable circumstance would only apply to an FDIC suit on behalf of the bank.

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The court rejected the FDIC's contrary arguments, noting that the FDIC relied on cases in which courts had interpreted exclusions with distinguishable wording, that the FDIC's arguments based on the assumed "purpose" of the exclusion could not overcome unambiguous policy language, and that arguments based on public policy could not justify rewriting a private contract. The court accordingly granted the carrier's motion for summary judgment.

The opinion is available [here](#).