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ALERT

Insured v. Insured Exclusion Does Not Bar Coverage for Claim by Former Executive of Pre-Acquisition Subsidiary; Possible—but Unpled—Allegations Do Not Trigger Coverage

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Applying Oregon law, the United States Court of Appeals for the Ninth Circuit has held that an insured v. insured exclusion does not apply to bar coverage for a suit brought by a former officer of a subsidiary of the insured entity. *Kollman v. Nat'l Union Fire Ins. Co. of Pittsburgh*, Nos. 08-36017, 08-36019 (9th Cir. Oct. 27, 2013). In reaching this conclusion, the court found that the claimant had been an officer of the subsidiary before the subsidiary had been acquired by the insured entity and, as such, did not constitute an insured under the policy for purposes of the exclusion.

The court also held that the suit against the insured, which alleged breach of contract, breach of fiduciary duty, conspiracy and similar claims, but not violations of state or federal securities law, does not constitute a "securities claim" within the meaning of the policy. According to the court, "vague references to potential securities violations [were] not enough, and the fact that [the claimant] may have been able to amend the complaint to state securities claims . . . [was] not relevant."

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