

Insurer Has Duty to Defend Even Though “Primary Thrust” of Action Excluded

April 2003

A federal district court, applying Maryland law, has held that an insurer has a duty to defend a class action brought against an errors and omissions policyholder because, even though the policy excluded coverage for the "primary thrust" of the class action, other allegations involved potentially non-excluded claims. *Hartford Cas. Ins. Co. v. Chase Title, Inc.*, No. CIV.JFM-02-3017, 2003 WL 721931 (D. Md. Feb. 25, 2003).

This case arose from an underlying class action lawsuit brought against a title company alleging deceptive settlement practices on home mortgage loans. The class claimants alleged violations of two statutes as well as common law claims for conversion, breach of fiduciary duty and negligence. The insurer had issued an errors and omissions policy that provided coverage for "damages" resulting from "wrongful acts." The policy stated that "damages" did not include "[d]isputes over fees, commissions, deposits, premiums or charges made for services rendered or which should have been rendered." The insurer denied coverage on the grounds that the lawsuit arose out of a dispute over fees. Coverage litigation ensued.

The court held that the lawsuit was covered under the policy because it potentially involved more than a dispute over fees. The court relied on *Utica Mutual Insurance Co. v. Miller*, 746 A.2d 935 (Md. Ct. Spec. App. 2000), in which a Maryland appellate court had held that an errors and omissions insurer had a duty to defend an insurance broker who had been sued over the premiums he charged, even though the policy excluded coverage for the "primary thrust" of the underlying complaint—a policyholder's mishandling of premiums. The *Utica* court had reasoned that the claims against the policyholder concerned more than just a failure to remit premiums because the complaint contained a negligence claim alleging failures to monitor business operations and to turn over certain records. Likewise, the court here concluded that, although the "primary thrust" of the class action lawsuit was a dispute over fees, two of the counts, which alleged misrepresentations to borrowers and violations of statutory obligations, potentially encompassed non-excluded claims. Since the policy potentially covered at least some of the class action claims, the court granted summary judgment in favor of the policyholder and held that the insurer had a duty to defend the entire class action lawsuit.

For more information, please contact one of WRF's Professional Liability Attorneys at 202.719.7130