

Ninth Circuit Holds No Coverage for False Claims Act Violations

November/December 2002

The U.S. Court of Appeals for the Ninth Circuit recently held that, under California law, an action under the False Claims Act (FCA) was not covered under a professional liability policy. *Horizon West, Inc. v. St. Paul Fire & Marine Ins. Co.*, 2002 U.S. App. LEXIS 18380 (9th Cir. Sept. 3, 2002).

The insureds, a group of nursing home operators, had been sued for allegedly submitting false Medicare and Medicaid claims and allegedly misrepresenting the quality of care at their facilities. The nursing home operators tendered the defense to the insurer, which was refused on the grounds that the policy did not cover FCA claims.

The nursing home operators argued that they were entitled to a defense because the policy required the insurer to compensate third parties for "injury or death resulting from...the providing or failure to provide professional services" and the complaint alleged an economic injury to the U.S.. In a short opinion, the court rejected the argument, reasoning that the "FCA injury does not 'result from' [the nursing home operators'] failure to provide professional services, but from its submission of allegedly fraudulent bills and its alleged misrepresentation of care standards." Thus, the provision of, or failure to provide, services was "merely conduct underlying the FCA claim," not the basis for the FCA claim itself. The court also rejected the argument that the submission of Medicare and Medicaid bills was a "professional service" under the policy, finding that the billing was an "effect of the service provided," and not itself a service.

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