

Court Applies Exclusion for Claims Involving Receivership of a Healthcare Benefit Plan

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The United States District Court for the Middle District of Florida, applying Florida law, has held that exclusions for claims involving the receivership of a healthcare benefit plan and claims involving Multiple Employer Welfare Arrangements (MEWA) barred coverage for claims brought by a receiver of a healthcare benefit plan alleging that brokers sold coverage under a benefit plan that was a MEWA. *White v. Cont'l Cas. Co.*, 2008 WL 2073905 (M.D. Fla. May 14, 2008).

The insurer issued a professional liability policy to health insurance brokers that provided coverage to the brokers' agents. Agents of the health insurance brokers, as well as another healthcare company, marketed and sold healthcare coverage that was purportedly an ERISA-qualified plan. The healthcare benefits plan was in fact operating as a MEWA. One purchaser filed suit against the healthcare company, alleging that the plan was a MEWA and that her medical expenses were not paid because the plan was insolvent. A second complaint against the healthcare company made similar allegations. Finally, a court placed a benefit plan in receivership, and the receiver brought claims against numerous defendants, including the insured agents and the healthcare company. The receiver alleged that the agents and healthcare company participated in the formation and operation of a benefit plan that courts and government agencies had determined was a MEWA.

The agents and healthcare company gave notice of these three suits under the policy issued to the health insurance broker. The policy excluded coverage for "[c]laims based upon, directly or indirectly, arising out of, or in any way involving the insolvency, receivership . . . or inability to pay of a benefit plan . . ." The policy further excluded coverage for claims arising out of or involving "the actual or alleged sale, attempted sale or servicing of any coverage, alleged coverage or plan placed with any form of MEWA . . ." The agents were covered as insureds under the broker's policy, but the healthcare company was not covered under the policy. The insurer denied coverage. After the three suits settled, the agents and healthcare company filed this coverage action alleging breach of the insurer's duty to defend and duty to indemnify, and the insurer sought a declaratory judgment that the policy did not cover the three lawsuits.

The court determined that no coverage was available for the first two lawsuits because no insured was named as a defendant. Addressing the receiver's claim, the court found the exclusion for claims involving the

receivership of a benefit plan barred coverage. The court rejected the argument that the term "claim" in the exclusion referred to claims of those seeking healthcare benefits, not the claim made by the plaintiffs against the healthcare company. The court reasoned that the policy unambiguously defined "claim" to include the claim by the receiver.

The court also concluded that the exclusion for claims involving MEWAs barred coverage for the claim. The court stated that the "plain allegations" made it "clear that the Claim involved the sale of a MEWA . . ." The court rejected the argument that the policy provided coverage because the agents did not know the benefit plan was a MEWA, explaining that the exclusion did not require that the insured had knowingly sold MEWA coverage.

The court also rejected the argument that the "arising out of" language in both exclusions was ambiguous because the Florida Supreme Court had held that the phrase is not ambiguous. The court therefore granted summary judgment in favor of the insurer.