

Personal Profit or Advantage Exclusion Applies to a Corporation

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The United States District Court for the Northern District of Illinois has held that a professional liability insurer had no duty to defend its insured in a RICO/state fraud action based on the personal profit or advantage exclusion. *Commercial Union Ins. Co. v. Auto Europe, L.L.C.*, No. 01-C-6961, 2002 U.S. Dist. LEXIS 3319 (N.D. Ill. Feb. 26, 2002).

The underlying action alleged that the insured fraudulently charged fictitious foreign sales or value added taxes on its car rentals, retaining the ill-gotten profits. This coverage action ensued after the insurer refused to provide a defense for the insured in the underlying action. The insurer maintained that coverage was barred by the personal profit or advantage exclusion, which provides that there is no coverage for "[a]ny 'damages' arising out of any actual gain by the insured of any personal profit or advantage to which the insured was not legally entitled." Both parties moved for summary judgment, and the district court granted the insurer's motion applying the personal profit or advantage exclusion.

In so holding, the district court rejected the insured's argument that the exclusion applies only to a natural person because the policy language refers to "personal" profit or advantage. The court observed the corporation was an "insured" under the policy and that the term "insured" was not limited to natural persons. Moreover, the court examined the definition of "personal" and "person" and determined that it plainly included both a "human being" and "an entity (such as a corporation) that is recognized by the law as having the rights and duties of a human being." Moreover, the court found that applying the exclusion to corporations comported with its purpose. The court also rejected the insured's argument that the court's expansive interpretation of the exclusion would bar coverage for any conduct by a corporation that resulted in a profit or benefit to the insured. The court countered that the exclusion only applies where the benefit obtained by a corporation was one to which it was not "legally entitled."