

E&O Insurer Must Defend Insured Against Claims for Wrongful Entry, Trespass and Conversion

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The Iowa Court of Appeals has held that an insurer had a duty to defend claims for wrongful entry, conversion and trespass because a fact finder could find that the insured acted negligently. *Scottsdale Ins. Co. v. Attorneys Process & Investigation Serv., Inc.*, 2009 WL 4842473 (Iowa Ct. App. Dec. 17, 2009). The court also found that coverage was unavailable for a conversion claim, which sought the return of payments the tribe made to the insureds, because such amounts would fall outside the policy's definition of "damages."

The insured, an investigation and security company, contracted with a tribe's elected Tribal Council to provide security services to the tribe. Pursuant to this contract, the insured entered, and remained for a day on, the tribe's property. At the time, the elected Tribal Council was fighting another group for control of the tribe. The other group later was recognized as the tribe's official governing body and sued the insured for wrongful entry, destruction of property, conversion and assault and battery. The insurer sought a declaration that it was not obligated to defend or indemnify the insured under the policy's E&O coverage part because: (1) the complaint alleged only intentional conduct, not negligent acts, and (2) the remedies sought in certain of the claims were not "damages" as defined in the policy.

The court held that the insurer had a duty to defend the insured under the policy's E&O coverage part. Although the court recognized that such coverage "does not apply to deliberate, as opposed to negligent, acts," it found that "a fact finder . . . could find [the insured] negligently or mistakenly entered . . . or damaged the Tribe's property" based on the insured's belief that it had authority from a member of the elected Tribal Council. Because the court determined that there was an arguable or potential duty to indemnify for certain of the claims, the insurer had a duty to defend the entire action.

The court further found that coverage was unavailable for the conversion claim, which sought a recovery based on payments the tribe made to the insureds, because such amounts would not constitute "damages" as defined in the policy. In that regard, the court noted that the policy's definition of "damages" carved out amounts paid to the insureds "as fees or expenses for services performed which are to be reimbursed or discharged as part of the judgment or settlement." Since the relief sought in the conversion count fell entirely outside the relevant definition of damages, there was no duty to indemnify the insured on that count. However,

the court held that there could be a duty to indemnify for other claims that did not seek recovery of amounts paid to the insured.