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NEWSLETTER

Fiduciary Liability Coverage Limited to Fiduciary Acts

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The Court of Appeals of New York has held that a fiduciary liability policy did not afford coverage for a class action lawsuit alleging that the insured violated the Employee Retirement Income Security Act of 1974 (ERISA) by implementing certain changes to its employee benefit plans. *Fed. Ins. Co. v. Int'l Bus. Machines Corp.*, 2012 WL 538241 (N.Y. Feb. 21, 2012).

The lawsuit alleged that the insured violated certain proscriptions of ERISA pertaining to age discrimination through a number of amendments to its employee benefit plans. The insured ultimately settled the action and sought reimbursement for the amounts paid to resolve the claim under its fiduciary liability policy. In the coverage litigation that followed, the state high court determined that the claim did not result from a "wrongful act" within the scope of the policy's insuring agreement. The court pointed out that the policy defined "wrongful act" to mean "any breach of responsibilities, obligations or duties by an insured which are imposed upon a fiduciary of a [benefit plan by ERISA or similar statute]." Construing this language, the court held that for coverage to apply, the claim must involve purported conduct by the insured in its capacity as an ERISA fiduciary. Here, according to the court, coverage was not triggered because the insured was acting as a plan settlor and not as a fiduciary when it made changes to its benefit plans that allegedly violated ERISA.