

Exclusion for Bodily Injury Claims Unambiguously Precludes Coverage

April 2005

The United States Court of Appeals for the Fourth Circuit, applying South Carolina law, has affirmed a grant of summary judgment in favor of an insurer, holding that an E&O policy's exclusion for claims "based upon, arising from or in consequence of any...bodily injury, sickness, disease or death of any person" unambiguously precludes coverage for a suit against an insured stemming from an underlying slip and fall action. *Fed. Ins. Co. v. Evian Horizontal Property Regime*, 2005 WL 567500 (4th Cir. Mar. 11, 2005).

The insured, a condominium association and property regime, was responsible for procuring general liability insurance for the property at issue. A condominium owner initiated an action against the association for damages arising out of a fall on the property. The general liability insurer denied coverage for the underlying suit based on a policy exclusion for bodily injury claims brought by a member of the association. The court in the underlying suit noted that the insured, which "was responsible for procuring insurance for regime property against risks failed, presumably by mistake, to properly do so."

The insured notified its E&O carrier of the underlying action. The E&O insurer denied coverage and brought the declaratory judgment action that resulted in the grant of summary judgment from which this appeal stemmed. On appeal, the court noted that an insurer has no duty to defend "where the damage is caused by a reason unambiguously excluded under the policy." The court analyzed the allegations from the underlying complaint to determine whether the E&O insurer had a duty to defend. Since the complaint alleged only bodily injury, the appellate court concluded that the E&O policy's exclusion for claims based on bodily injury unambiguously excluded coverage and affirmed the lower court's ruling.

For more information, please contact us at 202.719.7130.