

ALERT

Fourth Circuit Holds That Prior Knowledge Exclusion Bars Coverage for Claims Arising Out of Ponzi Scheme

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The United States Court of Appeals for the Fourth Circuit, applying South Carolina law, has held that there is no coverage for claims arising from a Ponzi scheme designed by one of the insured's officers because the professional liability policy's prior knowledge condition was not satisfied. *Continental Casualty Co. v. Battery Wealth, Inc.*, 2012 WL 3126353 (4th Cir. Aug. 2, 2012). The court affirmed a decision by the United States District Court for South Carolina granting summary judgment for the insurer. *Continental Casualty Co. v. Battery Wealth, Inc., et al.*, 2:09-cv-00605-WOB (D. S.C. May 5, 2011). A copy of the decision can be found [here](#). Wiley Rein represented the insurer in the appeal.

An insured wealth management company recommended that its clients invest in funds managed by the vice president, co-founder, and partial owner of the insured company. The investment funds, however, were actually a fraudulent Ponzi scheme for which the vice president was criminally prosecuted. Investors in the scheme brought civil actions against the insured company and its principals alleging fraud, misrepresentation, and breach of contract, among other claims. The policy's insuring agreement did not afford coverage for acts or omissions, or interrelated acts or omissions, if any insured had a basis to believe that such acts might reasonably be expected to be the basis of a claim. Because the vice president who propagated the Ponzi scheme clearly had knowledge of his own actions and knew that they were fraudulent prior to the policy's inception, the Fourth Circuit affirmed the district court's holding that the prior knowledge condition to coverage had not been satisfied with respect to the

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claims against the insureds that arose out of the Ponzi scheme.