

ALERT

Computer Software Exclusion Barred Coverage for Wrongful Death Claim Arising Out of Failure to Update GPS Software

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Applying Florida law, a federal district court has held that a policy's "computer software exclusion" applied to bar coverage for a lawsuit alleging bodily injury as a result of the insured's purported failure to update its global positioning systems ("GPS"). *Md. Cas. Co. v. Smartcop, Inc.*, 2012 WL 4344571 (S.D. Fla. Sept. 21, 2012).

The insured software company was sued by the representative of a police officer's estate based on allegations that the company had supplied a GPS for a police vehicle but negligently failed to maintain or update it, leading to the officer's death. The company's insurer took the position that coverage for the suit was excluded by a provision in its policy that barred coverage for claims for bodily injury "arising out of the rendering of or failure to render any service by [the insured] or on [the insured's] behalf in connection with the selling, licensing, franchising or furnishing of [the insured's] computer software including electronic data processing programs, designs, specifications, manuals and instructions."

Recognizing that Florida law requires the phrase "arising out of" to be construed broadly, the court held the exclusion applicable. According to the court, all of the allegations in the underlying complaint "clearly 'hav[e] a connection with' the services provided by [the insured] in relation to the selling, licensing, or furnishing of its computer software." The court also rejected the insured's argument that the exclusion did not preclude coverage for claims for defective products. In this regard, the court found that "[w]hether characterized as providing defective products or a defective service to the Sherriff's Office, all of the[] claims stem from [the insured's] duties to sell,

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license, or furnish its computer software.” The court also rejected the insured’s additional theory that the exclusion was limited to the initial sale of software, finding no basis in the policy language for such a reading.