

ALERT

# Duty to Defend Triggered by Insured's Alleged Knowledge that Third Party Would Rely on Services

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April 4, 2014

Applying Illinois law, an intermediate state appellate court has held that, for purposes of evaluating the duty to defend under an E&O policy, the “for a third party” component of the definition of professional was satisfied by allegations that the insured knew that third parties would rely on the services that the insured performed for its subsidiary. *Hilco Trading, LLC v. Liberty Surplus Ins. Corp.*, 2014 WL 1028536 (Ill. App. Ct. Mar. 17, 2014).

An insured asset valuation company and its subsidiary, an asset lending company, were sued by two financial institutions. The asset lending company was in the business of borrowing funds from financial institutions and loaning the funds to its own borrowers. The insured's loans to borrowers were then secured by collateral, and the asset valuation company conducted appraisals of the collateral. The asset valuation company performed the appraisals for the asset lending company, but it allegedly had knowledge that the appraisals would be provided to and relied upon by the financial institutions lending to its subsidiary. In the lawsuits, the financial institutions alleged, among other things, negligence in connection with the performance of the collateral appraisals.

The insureds tendered the suits to their E&O insurer, which declined coverage on the grounds that the claims did not allege wrongful acts in the performance of professional services. The policy defined “professional services” to mean “valuation opinions in support of asset-based lending which are provided by the Insured to a third party for a monetary fee.” According to the insurer, the appraisals at issue here did not constitute covered professional services because

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the appraisals were performed and provided by the asset valuation company for its subsidiary, and not a third party.

In the coverage litigation that followed, the court rejected the insurer's position and pointed out that the suits alleged that the asset valuation company knew that third parties—namely, the financial institutions—would rely on its appraisals. According to the court, these allegations were sufficient to trigger the duty to defend under the policy.

The opinion is available [here](#).