

ALERT

Professional Services Exclusion Bars Coverage for Claims Alleging Mismanagement of Mortgage-Backed Securities Investment Vehicle

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The Superior Court of the District of Columbia has granted a group of insurers' motion to dismiss where a policy's unambiguous professional services exclusion barred coverage for claims arising from mismanagement of an offshore entity created to serve as a vehicle for investments in mortgage-backed securities. *Carlyle Inv. Mgmt. L.L.C., et al. v. Ace Am. Ins. Co., et al.*, No. 2013 CA 003190 B (D.C. Super. Ct. May 15, 2014). Wiley Rein represented one of the excess insurers.

In 2006, three policyholder investment companies operating as a global private equity firm organized a new company to invest in residential mortgage-backed securities. Following the market collapse that wiped out the value of the mortgage-backed securities, investors sued the investment companies alleging forms of misrepresentation and mismanagement of the offshore entity. The policyholders sought defense costs under primary and excess manuscript private equity management and professional liability policies. The insurers denied coverage and moved to dismiss the coverage action based on an exclusion "for Loss in connection with any Professional Services Claim arising from Professional Services provided to" the offshore entity.

Applying the "eight corners rule," the court interpreted the exclusion under the terms of the policy and the allegations of the complaints. Contrary to the policyholders' urging, the court found that the relevant terms of the exclusion were expressly defined within the policy and

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declined to consider what the parties “may have intended” or may have expected the exclusion to mean. Although it noted that management liability claims “related to acts, errors, or omissions in corporate governance” are generally not excluded in professional liability policies, the court declined to depart from the plain meaning of the exclusion because it found no ambiguity in the primary policy’s terms. The court added that “by using defined terms in bold letters in the Exclusion, those terms can have only one meaning.” The primary policy defined “Professional Services” as including “the giving of financial, economic or investment advice,” rendering “investment management services,” “any activity relating to the offer, purchase or sale or solicitation for the purchase or sale” of portfolio entities, “providing advisory, consulting, [or] management . . . services,” or “other similar or related services.” Accordingly, the court applied the plain language of the defined terms, “Professional Services Claim” and “Professional Services,” to the allegations in the investors’ and liquidators’ complaints. The court concluded that the policy defined “Professional Services” broadly enough to “include virtually all of the conduct alleged” because it found that each claim in each underlying complaint arose from the provision of Professional Services to the offshore entity.

The opinion is available [here](#).