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FLORIDA DISTRICT COURT FINDS THAT A NON-INSURED PARTY DOES NOT PRECLUDE APPLICATION OF INSURED VERSUS INSURED

Bill Bila and Cassandra Jones recently obtained judgment on the pleadings in the Southern District of Florida, finding no coverage under a Directors & Officers policy pursuant to an Insured versus Insured exclusion.

The January 30, 2017, ruling came after the insureds initiated coverage litigation, arguing that the insurer had a duty to defend the underlying lawsuit, as well as a duty to indemnify for the settlement amount. The insured condominium association initially tendered the underlying lawsuit, which was brought by the former association board president and another condominium unit owner, alleging that the board mismanaged the installation of hurricane resistant glass. The underlying lawsuit was filed in November 2013, and the former Association president served in that capacity until early 2012. The insurer denied coverage for the underlying lawsuit, raising several exclusions, including the Insured versus Insured exclusion. The parties in the underlying lawsuit reached a mediated settlement in March 2016, after which the insureds instituted a coverage action in Florida State court, seeking recovery of their underlying defense costs and the amount of the settlement.

On behalf of the defendant, our firm removed the case to federal court, filed a counterclaim and subsequent motion for judgment on the pleadings. Plaintiffs did not dispute that the former board president served on the board within three years of the underlying lawsuit, as required under the policy's Insured versus Insured exclusion. Instead, plaintiffs argued that the insurer wrongfully refused to defend because the presence of a non-insured plaintiff in the underlying lawsuit required allocation between covered and uncovered matters. The court, relying on Florida law, found that the Insured versus Insured exclusion applied to bar coverage for the entire case from its inception because both insured and non-insured persons were initial parties to the suit.

The court rejected plaintiffs' allocation argument, finding that the provisions were inapplicable because the action was not covered.

The Marbella Condominium Association v. RSUI Indemnity Co., 9:16-cv-80987, Southern District of Florida