

WALKER WILCOX SUCCESSFULLY REPRESENTS INSURER IN SEVENTH CIRCUIT APPEAL AFFIRMING DENIAL OF COVERAGE FOR OVERDRAFT CLASS ACTION

Walker Wilcox attorneys Edward P. Gibbons and Christopher A. Wadley successfully represented Federal Insurance Company (“Federal”) before the United States Court of Appeals for the Seventh Circuit, in a case involving coverage for an underlying class action arising out of a bank’s imposition of overdraft fees. Specifically, on October 12, 2017, the Seventh Circuit affirmed that Federal did not have a duty to defend or indemnify BancorpSouth, Inc. (“BancorpSouth”) in an underlying class action alleging that BancorpSouth engaged in various practices and procedures that resulted in the imposition of overdraft fees on its customers. The court concluded that an exclusion in BancorpSouth’s professional liability policy, which excluded coverage for claims “based upon, arising from or in consequence of any fees or charges,” was unambiguous and applied to preclude coverage for the underlying lawsuit. In reaching that conclusion, the court observed that all of the underlying plaintiff’s allegations against BancorpSouth arose from the bank’s alleged imposition of excessive overdraft fees.

The plaintiff had initiated his lawsuit against BancorpSouth in May 2010, claiming that BancorpSouth engaged in a number of practices that resulted in the imposition of excessive overdraft fees, including resequencing debit card transactions and failing to provide customers with accurate balance information. BancorpSouth sought coverage for the lawsuit, but Federal declined. BancorpSouth later settled the action for \$24 million and sued Federal for reimbursement. BancorpSouth also claimed that Federal had denied coverage in bad faith.

The United States District Court for the Southern District of Indiana dismissed BancorpSouth’s lawsuit, concluding that the exclusion applied to bar coverage. BancorpSouth appealed, arguing that the underlying complaint contained allegations related to BancorpSouth’s general banking practices and procedures that did not implicate the exclusion. The Seventh Circuit, however, rejected that argument. While acknowledging that the underlying complaint contained allegations related to BancorpSouth’s banking practices and procedures, the court explained that those allegations could not be “read in a vacuum” and that each alleged act was tied to the bank’s overdraft fee scheme. Consequently, the court held that the exclusion barred coverage, and it affirmed the dismissal of BancorpSouth’s complaint.

The case is *BancorpSouth, Inc. v. Federal Insurance Co.*, No. 17-1425 (7th Cir. Oct. 12, 2017).