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A Hypothetical — Can A Professional Recover Under An Error And Omissions Policy For Lost Business Resulting From An Employee's Negligence?

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Commentary

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I. Overview

Errors and Omissions ("E&O") liability insurance is intended to protect individuals (or entities) that provide professional services for others against the consequences that may result from deficiencies or errors made in providing those services.[1] In other words, E&O policies insure professionals[2] who, while acting at an individual or entity's behest, commit negligence that injures the individual or entity. In those instances, the professional will seek coverage under his or her E&O policy to assist in defending and/or paying the claim for damages caused by the professional's actual or alleged negligence. These third-party liability situations are characterized by injury to *another person or entity* through which the insured professional seeks to reduce exposure by asserting coverage under his or her E&O policy.

The unanswered and rarely addressed question is: can the insured professional seek coverage under E&O insurance when *the professional* suffers the injury? For example, what if an employee of the professional, who is an insured under the E&O policy, commits negligence that harms the *professional*? By examining a hypothetical case involving an insurance agent whose subordinate injures him by fraud and negligence, this article outlines the issues involved when a professional is damaged by errors and omissions of his or her employee.

II. Background

Insurance agents E&O coverage provides insurance to cover claims generally arising from the negligence of both independent agents (who represent several insurance carriers) and exclusive agents (who primarily represent one insurance carrier). The insurance agents E&O policy's insuring agreements typically provide that the insurer will pay for "loss . . . aris[ing] out of the negligent acts, errors, or omissions in the conduct of the insured's business . . . in rendering or fail[ing] to render professional services" as an insurance agent and other related services.[3]

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The typical insurance agents E&O policy contains the following features:

1. A duty to defend and a duty to indemnify;

2. A deductible that does not apply to costs of defense; i.e., defense costs are offered to the insured *in addition to* the limits of liability;[4]

3. Where a group policy is issued to exclusive agents of a carrier, variable claim deductibles depending upon payment for negligence relating to products and services of: a) the carrier responsible for purchasing the policy for the group of agents or a "preferred provider" carrier (that is associated with the carrier), versus b) other covered carriers;

4. "Claims made and reported" trigger of coverage, i.e., the policy applies only when a claim is *both* "made" (when a named insured first learns of the claim) and "reported" (when the insured notifies the insurer) within the policy period;

5. Coverage for libel, slander and defamation claims when they relate to "rendering professional services for others";[5]

6. "Prior acts" coverage, involving the insured's acts prior to the policy period;

7. Optional coverage for "financial planning and registered investment advisor activities," to address related activities of insurance agents involved with financial and investment planning; and

8. Excludes coverage for activities related to what is normally covered by property and casualty insurance (e.g., personal injuries).

III. The Hypothetical Fact Pattern

As a basis for analyzing the extent of coverage under a typical insurance agents E&O policy, this article contemplates the following "hypothetical" fact pattern. An agent ("Agent") sells life, health and disability insurance for a national insurance carrier ("Carrier"). As typical in the insurance industry, the Carrier compensates the Agent on a commission basis. The Agent is a successful salesperson and top-selling agent for the Carrier.

The Agent hires an employee ("Employee") to assist in performing services for insurance clients. These services include both assisting the Agent with processing applications, and securing premium payments from applicants who purchase life, health and disability insurance through the Carrier. The employee is instructed to ensure that all necessary application information gathered from the applicants by the Agent is provided to the Carrier, and that premium payments are properly processed.

The employee also is assigned bookkeeping responsibility for the Agent's business. As part of those responsibilities, the Agent charges the Employee with compiling tax information for accountants to prepare state and federal returns for the Agent and his wife. Upon completion of the tax returns by the accountants, the Agent instructs the Employee to mail the signed returns, accompanied by designated payment prepared by the Agent, to the IRS and state tax authorities,

respectively. Furthermore, the Agent instructs the Employee to mail quarterly estimated payments to the IRS and state tax authorities.

The Agent develops confidence and trust in the Employee's abilities. Existing and prospective clients often deal directly with the Employee in the Agent's absence. After several years, the Agent discovers that the Employee is stealing funds from his business checking account. While investigating the extent of the theft, the Agent discovers that the Employee has been negligent in assisting the Agent with the administrative work related to selling and maintaining policies, which includes failing to process applications for clients, misapplying policy premiums, and writing checks from the Agent's business checking account to pay premiums for clients to the Carrier. The Agent also discovers that the Employee has created significant tax liabilities for him and his wife because, although the Employee told the Agent that she had mailed tax returns and payments to the IRS and state tax authorities, she had failed to do so. Moreover, the Employee intercepted the Agent's mail so that he did not receive any IRS or state notices.

As a result, the Agent spends nearly two years remedying the Employee's fraud and negligence. His insurance sales suffer because he cannot devote adequate time to develop new business. He loses commissions from old business because some clients discover that due to the Employee's errors, their policies have lapsed. Obviously dissatisfied, these clients retain another agent. The Agent's wife's disability policy, purchased through the Agent, lapses because the Employee fails to process premium payment; his wife is now uninsurable because she no longer works outside the home. Finally, the Agent incurs significant penalties and interest from the IRS and state tax authorities from overdue tax payments and returns. The Agent holds a fidelity bond and obtains a recovery from his bond carrier for loss due to embezzlement, but the bond carrier will not compensate the Agent for losses resulting from the Employee's errors and omissions.

The Agent and his wife sue the Employee alleging, among other things, that the Employee committed negligent acts in the discharge of her duties as an employee, causing damage to the Agent and his wife (the "Suit"). In all, the Suit alleges the following causes of action against the Employee: 1) negligence, 2) negligent misrepresentation, 3) tortious interference with contractual relations, and 4) tortious interference with prospective economic advantage. The Agent seeks damages for the harm suffered by his business resulting from the Employee's acts, including:

- lost commissions because premiums were not forwarded to the Carrier, including those of a large client, who, because of the Employees' acts, eventually discharged the Agent;

- lost opportunities for further sales and resultant commissions because the Employee's acts created dissatisfied clients, thus decreasing the likelihood clients would purchase additional insurance;

- lost insurance commissions resulting from substantial time devoted to rectifying the Agent and his wife's tax delinquencies, the Agent's business checking account, accounts of the Agent's life, health and disability clients, and other related matters; and

- penalties and interest assessed by the IRS and state tax authorities.

As a policyholder, the Agent's wife seeks damages from the Employee for allowing her disability policy to lapse. Once sued, the Employee tenders defense to the E&O Insurer.

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IV. Relevant Policy Terms And Exclusions, And Analysis

The E&O Insurer agrees to defend the Employee under a reservation of rights. At the same time, the E&O Insurer files a declaratory judgment action, naming the Employee, the Agent and his wife as defendants, and requesting a determination by the court that there is no coverage where an insurance agent sues his employee for negligence relating to a fraud. The declaratory judgment action asks that the court address both the duty to defend and duty to indemnify provided by the E&O policy.

In attempting to ascertain the parties' rights, we must examine the relevant E&O policy terms.[6]

A. The Policy Terms

1. Insuring Agreements

a. The E&O policy provides in Insuring Agreements Section I (titled COVERAGE — PROFESSIONAL LIABILITY AND PERSONAL INJURY"):

> To pay on behalf of the INSURED all sums which the INSURED shall become legally obligated to pay as DAMAGES because of:
>
> any actual or alleged negligent act, error or omission of the INSURED, or any person for whose acts the INSURED is legally liable, in rendering or failing to render PROFESSIONAL SERVICES for others in the conduct of the NAMED INSURED'S profession as a licensed Life Agent, Broker, General Agent or Manager; Accident and Health Agent, Broker, General Agent or Manager; Notary Public; or Registered Representative.

b. The E&O policy provides in Insuring Agreements Section II (titled "DEFENSE AND SETTLEMENT"):

> The Company will have the right and duty to defend any CLAIM or suit against the INSURED seeking DAMAGES to which this insurance applies even if any of the allegations of the CLAIM or suit are groundless, false or fraudulent.

2. Pertinent Definitions

a. "NAMED INSURED" shall mean:

> those individuals authorized by contract to solicit insurance and annuity business on behalf of the insurance company named [in the policy's declarations].

b. "INSURED" includes:

1) any [business entity] which engages in PROFESSIONAL SERVICES and which is either owned or controlled by the NAMED INSURED or in which the NAMED INSURED is an the Employee and then only with respect to those operations of the busi-

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ness entity related to the "professional services" provided by the NAMED INSURED;

2) any person acting on behalf of the NAMED INSURED who was or is a partner, officer, director, stockholder or the Employee of the NAMED INSURED or the NAMED INSURED's business entity;

c. "CLAIM" shall mean a demand received by the INSURED for money or services, including the service of suit or the institution of arbitration proceedings against the INSURED.

d. "PROFESSIONAL SERVICES" shall mean those services necessary or incidental to the conduct of the insurance business of the NAMED INSURED. Specifically,

1) the sale and/or servicing of:

Life Insurance, Accident and Health Insurance[,] . . . Disability Income Insurance and/or Annuities [and];

* * *

2) providing advice, consultation, administration and services, including those of a Notary Public, in conjunction with any of the products listed in Insuring Agreement IV [life, accident, health and related insurance and services].

3. Analyzing the Insuring Clause: Are The Employee's Acts "Professional Services for Others?"

Considering the hypothetical facts and the E&O policy terms itemized above, what arguments exist for the parties involved, the issuer of the E&O policy ("Insurer"), the Insured (the Employee) and the third-party claimants (the Agent and wife), regarding coverage under the Policy's duty to defend and duty to indemnify? In the hypothetical, the Agent and the Employee are both defined Insureds under the E&O policy. Moreover, service of the Suit upon the Employee constitutes a defined Claim under the E&O policy. Thus, we must analyze what constitutes "Professional Services for others."[7] The perspective of the Insurer, the third-party claimants, and Insured Employee (collectively "Others"), will vary.

a. Insurer's Perspective

The Insuring Agreements provide coverage only for "any actual or alleged negligent act, error or omission . . . in rendering or failing to render PROFESSIONAL SERVICES *for others*[.]"[8] The Employee's actions were not professional services for others but services for *the Agent* as an employee. The Agent is not an "other" who sought life, accident or health insurance; to the contrary, he is an Insured.[9] The Suit alleges no damages to anyone other than the Agent and his wife. Cases interpreting E&O policies require that an insured's liability arise from rendering professional services to a client.[10] Since the E&O policy requires coverage only for claims arising from professional services for *others* (but not for an Insured), no coverage exists under the E&O policy for the Employee's misdeeds.

b. Others' Perspectives

"Professional Services" is defined very broadly in the E&O policy as "services necessary or incidental to the conduct of the insurance business" and includes providing "advice, consultation, administration and services *in conjunction with*" selling life and disability insurance.[11] Since "Professional Services" is fundamental to triggering coverage under the Insuring Agreements, this broad definition shows that the insured would reasonably expect coverage for the Suit described in the hypothetical.[12] Moreover, the policy does not exclude claims by one insured against another;[13] accordingly, the fact that the Employee and the Agent are both insureds under the E&O policy is irrelevant. Furthermore, the wife of the Agent is *not* an insured but a client, thus an "other" who seeks insurance. Finally, at best, "Professional Services for others" is ambiguous, and therefore, the term is construed in favor of coverage to the insured.[14] Accordingly, for all these reasons, coverage exists under the E&O policy.

B. Relevant Policy Exclusions and Analysis

1. The E&O policy excludes the following claims relevant to the hypothetical.

a. any judgment or final adjudication based upon or arising out of any dishonest, fraudulent, criminal or malicious act, error or omission [hereinafter, the "Crime/Fraud Exclusion"].

b. any CLAIM arising out of PROFESSIONAL SERVICES performed by the INSURED as an accountant, attorney or real estate agent or real estate broker [hereinafter, the "Accounting Exclusion"].

c. any CLAIM arising out of, or contributed to by, any commingling of, or use of, client funds [hereinafter, the "Commingled Funds Exclusion"].

d. any Claim arising out of the INSURED'S inability or refusal to pay or collect premium, Claim or tax monies [hereinafter, the "Refusal to Pay Premium Exclusion"].

2. Analyzing the Relevant Exclusions

Whether the E&O policy exclusions apply depends somewhat upon their relation to the E&O policy's separate duties — defense and indemnity. Generally, the duty to defend depends on the specific allegations of the complaint that trigger coverage.[15] In this hypothetical, the Suit contains four counts. Two counts allege negligence, so it is likely that the duty to defend is triggered and the Insurer must defend the entire action.[16] Moreover, most courts construe exclusionary clauses against insurers.[17] We analyze the specific exclusions from the perspective of the Insurer and the Others.

a. Crime/Fraud Exclusion

(i) Insurer's Perspective

The Suit in this hypothetical arises from the Insured Employee's intentional, fraudulent conduct. Any negligent conduct is only incidental to the Employee's embezzlement scheme, which primarily motivated the Employee's conduct.[18] Moreover, the Suit alleges negligence only to

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trigger coverage, and the Insurer should not have to defend such acts.[19] Furthermore, any damages suffered by the Agent and his wife did not result from the Employee's *negligence*, but from fraud and other intentional conduct. This is important because the duty to indemnify applies only if the Employee committed negligence that caused damages to the Insured Agent and his wife.

(ii) Others' Perspectives

This exclusion is inapplicable to the duty to defend for several reasons. First, the Crime/Fraud Exclusion only applies if there is a "judgment or final adjudication"[20] based on dishonest or fraudulent acts. Second, if the Suit alleges negligence on the part of an Insured under the E&O policy, it is irrelevant whether those allegations were arguably pled to trigger coverage. The Insurer has a duty under the E&O policy's Insuring Agreements to defend a claim even if allegations are "groundless, false or fraudulent."[21] Third, the Insurer's duty to defend arises even if the E&O policy applies to only one theory of recovery.[22]

Regarding the duty to indemnify, the Insured Agent should recover under the E&O Policy (and the Employee should be indemnified) if the trier of fact finds that specific acts of negligence proximately caused damages to the Agent and his wife. Accordingly, the parties should request a specific finding in the Suit (through jury instructions, special interrogatory or otherwise) that the Employee acted negligently. Because the Suit is directed toward remedying the Agent and his wife's damages due to the Employee's *negligence*, and not theft (for which the Agent has largely recovered under his fidelity bond), the Agent and his wife should be able to obtain the specific finding if they prove their negligence case.

b. Accounting Exclusion

(i) Insurer's Perspective

The claim involves the Employee's failure to properly maintain the Agent's checking account, business records and tax liabilities. Those functions are performed by accountants. Accordingly, the claim is excluded from coverage because it "arises out of"[23] accounting services provided by the Employee.

(ii) Others' Perspectives

The Suit alleges that the Employee performed *bookkeeping*, not accounting, work. Indeed, the Agent retained an outside accountant to perform tax preparation services. The Accounting Exclusion is directed toward *professional* accounting services, which the Employee did not perform, and another policy (accountants' liability) would address. Accordingly, the E&O Policy would not exclude coverage for activities involved, as here, in maintaining a checking account, keeping insurance client records, and tracking the Agent's expenses.

c. Commingled Funds Exclusion

(i) Insurer's Perspective

The Suit alleges instances that the Employee did not properly forward premiums for payment, but instead commingled them with funds later embezzled by the Employee. This exclusion applies because it excludes "any CLAIM *arising out of, or contributed to by*, any commingling

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of, or use of, client funds."[24] The breadth of this exclusion precludes coverage in a situation inspired by the Employee's embezzlement scheme.[25]

(ii) Others' Perspectives

The claim made against the Employee does not arise out of commingling client funds. Instead, the claim involves the Employee's acts and omissions in performing duties related to selling and maintaining insurance policies and the use of the Agent's commission income to pay premiums. In many cases, premiums were never obtained from the client. This claim does not involve recovering client funds, from clients or anyone else. The Agent and his wife seek damages due to the Employee's negligent acts. The Commingled Funds Exclusion was not intended to exclude coverage for negligent acts that exist *independent of* client funds, and therefore, it does not apply.

d. Refusal to Pay Premium Exclusion

(i) Insurer's Perspective

This exclusion prohibits claims "arising out of the INSURED'S inability or refusal to pay or collect premium, CLAIM or tax monies."[26] The allegations in the Suit arise from client premium payments diverted by the Employee to advance her embezzlement scheme. Moreover, the Agent and his wife allege that the Employee's negligence resulted in their inability to pay taxes. Accordingly, the exclusion applies because the Employee's acts resulted ultimately in the Agent's inability to collect premiums and to pay taxes.[27]

(ii) Others' Perspectives

This is not a claim to recover premiums, claim funds, or taxes owed by clients. Rather, this claim involves damages resulting from the Employee's failure to perform her duties while working for the Agent, which included, among other things, mishandling premiums that *were* collected. Moreover, tax payments were *prepared*, but not forwarded, due to the Employee's negligence. No evidence exists of an "inability or refusal to pay"[28] by the Agent, or his clients. This exclusion did not intend to exclude the acts of negligence described in the Suit; therefore it does not preclude coverage.[29]

V. Summary

The pertinent policy terms and exclusions do not conclusively address the coverage issues raised by the hypothetical fact pattern. Arguments exists for the Insurer, the Insured Employee as well as the third-party claimants to all persuasively assert their coverage positions. The foregoing discussion reveals that although it is likely the Insurer would owe a defense to the Employee, the duty to indemnify would depend, largely, on the proof adduced at trial. Presently, no known reported case addresses the coverage issues identified here in the context of an E&O policy. A recent California case, however, discusses insurance coverage where an employee is charged with embezzling funds from the insured-employer.

In Alvarez v. Coregis, 63 Cal. App. 4th 666, 74 Cal. Rptr. 2d 110 (Cal. App. 1998), a school system sued its bookkeeper for several causes of action stemming from embezzlement. The policy at issue, entitled "School Package Policy," provided, among other things, errors and omis-

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sions coverage for "damages . . . resulting from a wrongful act committed by the insured." The policy's definition of *insureds* included employees.

The bookkeeper tendered her defense to Coregis, the liability insurer for the school system. Coregis refused to provide a defense, and the bookkeeper filed a declaratory judgment action against Coregis. The trial court sustained Coregis' demurrer, and the bookkeeper appealed. The appellate court reversed, holding that Coregis had a duty to defend the bookkeeper. Although the policy contained an exclusion for "claims for damages alleging fraud, dishonesty, criminal acts or omissions, or unlawful profit or advantage," the policy also provided that Coregis "will, however, defend the insured against such claims." Moreover, Coregis also agreed that "it would defend any suit against the Insured alleging injury or damage to which this insurance applies and seeking damages on account thereof, even if such suit is groundless, false, or fraudulent . . ."

In addressing an additional concern that closely parallels the hypothetical fact pattern presented here, the Alvarez court considered whether Coregis owed a duty to defend where one insured is suing another. In deciding this issue in favor of coverage, the court noted two important points:

1. The policy contained no provision excluding coverage of claims between insureds; and

2. Since the policy would provide a defense to the *employer* for an action brought by an employee (for a non-worker's compensation covered act — e.g., an assault by the employer on the bookkeeper), the reverse should be true and the policy should provide a defense to *the employee* for a covered claim.

VI. Conclusion

A court applying Alvarez would likely find that the Insurer owed the Employee a duty to defend under the hypothetical facts presented here. The duty to indemnify, however, is more complex and problematic. Whether the Insurer owes the Employee an indemnity duty would likely depend on specific findings of the trier of fact as to the allegations of negligence as they relate to the Employee's fraud scheme. Applying the hypothetical facts as described here to a typical insurance agents E&O policy demonstrates the difficulty in analyzing coverage for a situation that the policy's drafters did not likely anticipate.

Insurance policies are not always drafted with clear limitations of coverage for the contemplated activities insured. Counsel representing claimants should carefully craft complaints with coverage issues in mind; as discussed, policy ambiguities are construed in favor of the insured. Conversely, counsel representing insurers should consult with their clients to ensure that policies are drafted to prevent claims not intended for coverage. In particular, carriers are well advised to include an exclusion for claims by insureds in all professional liability policies. In the hypothetical, the insurer could have settled (in its favor) all the coverage questions raised concerning the Agent and the Employee if it had that exclusion in the E&O policy.

ENDNOTES

1. Kolis, Reiter, Segerdahl, POLICYHOLDER'S GUIDE TO THE LAW OF INSURANCE COVERAGE, §12.01[A] (1997).

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2. Historically, "malpractice insurance" refers to professional liability insurance covering physicians and lawyers while other professionals (e.g., architects, accountants, brokers, insurance agents) obtain "errors and omissions" insurance. See COUCH on Insurance, §131:38 (3d Ed. 1997).

3. *International Risk Management Institute, Inc.'s Professional Liability Insurance*, Vol. II, Exhibit XV.E.1.

4. With most other types of professional liability policies, the expenditure of defense costs reduces available policy limits.

5. See discussion of coverage under a hypothetical insurance agents E&O policy, *infra*, at IV.A.3.

6. The policy terms described in this article are taken from an actual E&O insurance agents policy.

7. Insuring Agreement, quoted at IV.A.1.a., *supra.*

8. *Id.* (emphasis added).

9. See, e.g., Mayer v. National Union Fire Insurance Co., 192 A.D.2d 426, 597 N.Y.S.2d 4, 5 (mem. N.Y. Sup. Ct. 1993) (insurer has no obligation to cover claims by company against its own insurance agents; E&O policy covers only claims by "others" against the insureds).

10. Mendelsohn v. CNA Insurance Co., 115 Ill. App. 3d 964, 451 N.E. 2d 919, 922 (Ill. App. 1983) (attorney's conduct in his own divorce action does not constitute "professional activities").

11. Definitions, IV.A.2.d., *supra* (emphasis added).

12. *See, e.g.*, Gray v. Zurich Insurance Co., 65 Cal.2d 263, 272 (1966).

13. "Insured vs. insured" exclusions are present in virtually all E&O insurance agent policy forms. *International Risk Management Institute, Inc.'s Professional Liability Insurance*, Vol. II, at XV.E.19. In the hypothetical, the policy does not contain this exclusion.

14. *See, e.g.*, Employers Reinsurance Corp. v. Landmark, 547 N.W.2d 527, 532 (N.D. 1996); Britamco Underwriters Inc. v. Emerald Extract Co., 855 F. Supp. 793 (E.D. Pa. 1994).

15. *See, e.g.*, K.L. Pattison v. Employers Reinsurance Corp., 900 F.2d 986, 998 (6th Cir. 1990) ("an insurer must defend its insured when the allegations contained in the underlying complaint arguably come within the policy coverage"); *accord* Britamco Underwriters, 855 F. Supp. at 797.

16. In duty to defend context, an insurer must defend the entire matter even if only one theory of recovery falls under policy's coverage. *See, e.g.*, Continental Cas. Co. v. McDowell and Colantoni, Ltd., 282 Ill. App. 3d 236, 668 N.E.2d 59, 63 (Ill. App. 1996); Employees Insurance Representatives, Inc. v. Employers Reinsurance Corp., 653 So.2d 27 (La. App. 1995).

17. Courts strictly construe exclusionary clauses against the insurer and in favor of coverage. Gulf Coast Marine, Inc. v. Young, 608 So.2d 251, 252-253 (La. App. 1992); St. Paul v. Molton, Allen & Williams Corp., 592 So. 2d 199 (Ala. 1991); National Union Fire Insurance Co. v. Evenson, 439 N.W.2d 394 (Minn. App. 1989).

18. Conley v. Utica Mutual Insurance Company, 1986 Ohio App. LEXIS 8697, October 3, 1986 (despite allegations of negligence, insurance agent's liability resulted from fraud); *accord* Littleton v. Employers Reinsurance Corp., 933 F.2d 337 (5th Cir. 1991).

19. *See, e.g.*, State Farm v. Watters, 268 Ill. App. 3d 501, 644 N.E.2d 492, 498 (Ill. App. 1994) (allegations of negligence constituted a transparent attempt to trigger coverage).

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20. Exclusion, quoted at IV.B.1.a., *supra*.

21. Insuring Agreement, quoted at IV.A.1.b., *supra*.

22. Continental Cas. Co., *supra*, 668 N.E.2d at 63.

23. Exclusion, quoted at IV.B.1.b., *supra*.

24. Exclusion, quoted at IV.B.1.c., *supra* (emphasis added).

25. See Bell v. Lloyd's Underwriters, 97 F.3d 632, 639 (2d Cir. 1996) (rejecting ambiguity argument and holding that insurance broker who had failed to properly forward premiums was not entitled to indemnity due to professional liability policy exclusion for claims "arising out of the commingling of monies or accounts, or loss of monies received by [insurance broker] or credited to [insurance broker's] account").

26. Exclusion, quoted at IV.B.1.d., *supra*.

27. *See* Gulf Coast Marine, Inc., *supra*, 608 So.2d at 253-254 (similar premiums exclusion held to be unambiguous and enforceable to preclude claim by insurance broker).

28. Exclusion, quoted at IV.B.1.d., *supra*.

29. *See e.g.*, Pattison v. Employers Reinsurance Corp., 900 F.2d 986, 987 (6th Cir. 1990) (similar exclusion found to be ambiguous when applied to situation in which a subagent of the insured extorted premiums paid by customers for insurance); *accord* Utica Mutual Insurance Co. v. Impallaria, 892 F.2d 1107 (1st Cir. 1989); Employees Insurance Representatives, Inc., *supra*, 653 So.2d at 27. ■

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