CARLTON FIELDS

Court Holds Insured vs. Insured Exclusion Unambiguous, Precluding Coverage

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The “insured v. insured” exclusion in insurance policies omits from coverage claims based on suits brought by one insured against another. The question of whether or not the insured v. insured exclusion applies to preclude coverage – a frequently occurring D&O insurance coverage issue – was addressed in a Florida appellate court decision on April 4, which both distinguished an earlier decision and rejected arguments of ambiguity. In *Durant v. James and Progressive Casualty Insurance Company*, a case of first impression in the Florida courts, Carlton Fields attorneys created Florida law upholding the applicability of the insured v. insured exclusion to a claim by a former director of the insured, who sued the insured’s officer, in the director’s separate capacity as a shareholder. Plaintiff Durant relied on *Rigby v. Underwriters at Lloyd’s, London*, for his position that the claim should be covered as it was brought under his personal capacity unrelated to his former director position. The court disagreed, noting that his status as an insured resulted from his status as a past director. The case also interprets the employee claim exception to that exclusion, citing a Florida Statute that a director is not an employee of a company. Based on the plain language of the policy, the court rejected arguments holding the exclusion to be ambiguous. Shareholder Peter Webster, who represented the

insurer in the proceeding along with shareholder Patricia Thompson, examined the court's interpretation and application of the D&O policy's insured v. insured exclusion in a guest blog post published on *The D&O Diary*, a national blog focused on D&O liability issues. **Read**: Court Holds Insured vs. Insured Exclusion Unambiguous, Precluding Coverage *This originally appeared in the D&O Diary on April 7, 2016.*

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