

April 5, 2023

Traub Lieberman Partner Brian Bassett Prevails at U.S. Court of Appeals for the Third Circuit

Related Attorneys: Brian C. Bassett

On April 5, 2023, Traub Lieberman Partner Brian Bassett obtained affirmation from the U.S. Court of Appeals for the Third Circuit that an insurance company client, Landmark American Insurance Company, had no duty to defend its insureds in an underlying lawsuit brought by a former client of the insured.

Landmark's insured was an employment agency that provided temporary employee placement and visa application processing services to workers from Mexico and Central America. Landmark issued a professional liability policy to its insured that covered the insured's employment placement services.

In the underlying action, a former client of the insured filed an action against the insured and its President alleging violations of federal human trafficking, wage-and-hour, and unfair trade practices laws, as well as claims for breach of contract and unjust enrichment. The complaint alleged that the former client was issued an H-2B work visa by the insured and expected to leave for the United States immediately, but the insured delayed his employment for more than a month. When the former client finally arrived in the U.S., the insured allegedly confiscated his passport, housed him in unsuitable conditions, assigned him tasks outside the scope of his employment contract, and considerably underpaid him. The complaint alleged that the former client contacted the National Human Trafficking Hotline and was connected with legal representation.

The insured sought coverage for the lawsuit under the professional liability policy issued by Landmark. Landmark declined to defend the insured on the grounds that the allegations did not concern the provision of covered professional services in providing employment placement services. Landmark further asserted that the complaint alleged that the insured's conduct was intentional and therefore not covered. The insured filed suit against Landmark for breach of contract and bad faith in the U.S. District Court for the Eastern District of Pennsylvania. The District Court agreed with Landmark's interpretation of the policy and dismissed the action. The insureds filed an appeal before the Third Circuit.

In the appeal, the insured argued that it had a reasonable expectation of coverage after Landmark defended it in an earlier, similar underlying class action. The Third Circuit disagreed, and affirmed the District Court's finding that the reasonable expectations doctrine did not apply. Additionally, the scope of the duty to defend is governed by the policy's plain language, which extends coverage only to claims alleging "negligent act[s], error[s], or omission[s] . . . in the performance of providing . . . employee placement services." In review of the facts of the case, the court found that the former client's complaint did not allege negligence in providing employment placement services and was therefore outside of the scope of coverage of the policy. The Third Circuit therefore affirmed the District Court's decision that Landmark owed no duty to defend the underlying lawsuit.