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INSURANCE LAW BLOG

January 8, 2019

Florida Court Holds Securities Exclusion Applicable

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In its recent decision in *Colorado Boxed Beef Co., Inc. v. Evanston Ins. Co.,*2019 WL 77376 (M.D. Fla. Jan. 2, 2019), the United States District Court for the Middle District of Florida had occasion to consider an exclusion in a management liability policy applicable to the purchase and sale of debt or equity securities.

Three individual officers and directors of Evanston's insured, Colorado Boxed Beef, were named as defendants in a lawsuit for having allegedly made misrepresentations and omissions of materials facts in connection with their purchase of stock from the underlying plaintiff, also an officer of the insured. Numerous causes of action were alleged, including fraud, negligent misrepresentation, breach of fiduciary duty and rescission.

Evanston contended that it had no coverage obligation in connection with the suit on the basis of an exclusion in its policy applicable to claims ""[b]ased upon, arising out of or in any way involving...the actual, alleged or attempted purchase or sale, or offer or solicitation of an offer to purchase or sell, any debt or equity securities[.]"

The court agreed that the exclusion applied so long as underlying claim "in any way" seeks recovery arising out of the sale of securities. Observing that the entire underlying lawsuit sought to revoke, rescind, or recover damage for the sale of stock to the defendant officers and directors, the court agreed that the exclusion applied. In so concluding, the court acknowledged that the complaint described some activities that both precedent and continued after the sale of the stock. The court nevertheless concluded that these allegations were made solely for providing details concerning the alleged misrepresentations and omissions made in connection with the sale. As the court explained:

… when read with the underlying complaint, these acts do not stand alone. They are part and parcel of the fraudulent inducement and purchase of the (suing) Sellers' shares in the company. These purported claims more than "in any way involve" equity security sales, and these claims certainly "arise out of" the Sellers' quest for SPA rescission and breach damages. … these acts are alleged to be ways the Buyers (Plaintiffs here) cheated the Sellers (Plaintiffs underlying) into taking low value – one of several fiduciary breaches which enabled the rescindable, self-dealing and injurious SPA. These are the very acts by which the securities fraud is alleged to have been accomplished. That the self-dealing might be sued upon by underlying plaintiffs in a separate action does not change what they are: part of the scheme to undervalue the company and cheat the sale price (i.e. "relating in any way to...and arising out of" stock sales).