

Auto Exclusion Applied to All Claims of Negligence, Including Antecedent Negligence and Negligent Entrustment and Hiring

Insurance Law Update

November 2010

By: [L. Kimberly Steele](#)

U.S. District Court for the Southern District of Texas

In *Associated Marine & Indus. Staffing, Inc. v. Liberty Surplus Ins. Corp.*, 2010 WL 3984503 (S.D. Tex. Oct. 8, 2010), the federal district court granted summary judgment in favor of Liberty Surplus, finding that it had no duty to defend or indemnify its insured for claims arising out of an automobile accident involving the insured's employee.

Liberty Surplus issued a general liability policy to Associated Marine that was in effect on the date that an Associated Marine employee was involved in an auto accident with a third party. Associated Marine sought defense and indemnity from Liberty Surplus for the claims asserted in the lawsuit filed by the injured third party. Liberty Surplus declined the tender of the claim pursuant to the policy's auto exclusion, and Associated Marine sued for breach of contract and violations of the Texas Deceptive Trade Practices Act and Insurance Code.

Associated Marine argued that the auto exclusion relied upon by Liberty was ambiguous and/or did not apply to preclude coverage for the injured party's claims of antecedent negligence, or negligent entrustment, hiring, training and supervision. Upon a review of Texas precedent, the district court disagreed, finding that the auto exclusion precludes coverage for claims for antecedent negligence such as those asserted by the underlying plaintiff. The court found that the claims for negligent entrustment, hiring training and supervisions were "inherently interrelated with and would not exist 'but for' the . . . excluded 'use' of the auto" because the underlying plaintiff would have no claim against the insured for the antecedent conduct were it not for the negligent operation of the vehicle.

Related Practices:

[Insurance Practices](#)