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Eleventh Circuit Affirms "Exceptional Case" Ruling: Insurer Had No Duty to Defend Construction Debris Claim Where Amended Complaint Omitted Crucial Fact Implicating Pollution Exclusion

The Eleventh Circuit, affirming the district court's departure from Florida's four corners rule, held that a pollution exclusion barred coverage for a bodily injury claim arising from exposure to construction debris, even though the operative pleading on its face stated a claim within coverage. The court applied an exception to the general rule and considered extrinsic evidence because the parties were aware of an undisputed fact that if pled, would have placed the claim outside of coverage.

The Case

The insured, BBG, was a general contractor retained to renovate a domestic violence resource center in Ft. Walton Beach, Florida. The claimant, a part-time worker at the center, claimed that she sustained bodily injury from contact with construction debris at the center, and sued BBG for those injuries. In the operative First Amended Complaint, she claimed BBG failed to ensure that proper controls and protections were in place to contain "construction debris." The First Amended Complaint did not define "construction debris" nor describe claimant's "bodily injury."

BBG tendered the claim to its insurer, who denied coverage based on the policy's pollution exclusion. That exclusion did not cover "'[b]odily injury' or 'property damage' which would not

have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of 'pollutants' at any time." The policy defined "pollutants" as "any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed."

BBG filed a breach of contract action against its insurer. Both parties moved for summary judgment.

BBG argued that the insurer breached the duty to defend because the allegations of the First Amended Complaint did not unequivocally plead facts that fit solely within the policy's pollution exclusion.

The insurer argued that the original and amended complaints alleged facts that fell squarely within the pollution exclusion, but argued in any event, that this case fit within the exceptional line of cases that permits courts to consider facts outside the operative pleading when deciding a duty to defend. The insurer pointed to the facts alleged in the original complaint, a pre-suit demand letter, and claimant's deposition testimony.

The district court granted the insurer's motion and denied BBG's motion. It agreed with the insurer that it was allowed to consider extrinsic evidence under this circumstance. The court determined that claimant attempted to plead into coverage by amending her complaint to assert more general allegations. The district court reasoned that "the amended complaint cannot be fairly read to allege" that claimant was injured by "materials that would not typically be considered irritants or contaminants, such as lumber, nails, bricks, or sheets of glass." The district court concluded that at some point in legal proceedings "common sense should prevail, which is in essence the basis for the limited exception to the four corners rule."

The 11th Circuit's Ruling

The Eleventh Circuit affirmed. It acknowledged that the First Amended Complaint, by itself, did not allege facts that would invoke the pollution exclusion. The allegations in the First Amended Complaint were that claimant suffered bodily injury because of BBG's negligence and BBG's failure to train its employees to prevent construction debris from escaping the renovation activities. But it was impossible to tell what type of construction debris escaped, or the specific injury claimant suffered from BBG's alleged negligence. From the four corners of the complaint, the insurer would have a duty to defend.

But the court recognized an exception to Florida's four corners rule. The court stated that "in special circumstances, a court may consider extrinsic facts if those facts are undisputed, and, had they been pled in the complaint, they clearly would have placed the claims outside the scope of coverage." The court explained that such cases are "exceptional cases in which courts have crafted an equitable remedy when it is manifestly obvious to all involved that the actual facts placed the claims outside the scope of coverage." The court further emphasized that coverage should turn on the merits, not creative pleading.

The Eleventh Circuit found that this case presented one of those exceptional situations where the actual facts place the claims outside of coverage, but the amended pleading omitted a crucial, undisputed fact in an attempt to plead into coverage. Before suit, claimant's attorney sent the insurer a demand letter asserting that claimant was injured after being "exposed to hazardous fumes and dust" due to BBG's remodeling activities. The letter included medical records that indicated claimant was exposed to fiberglass at a construction site and diagnosed with bronchitis.

Based on the demand letter and medical records, the insurer had knowledge that claimant's alleged injuries would not have occurred but for the alleged release or escape of

pollutants. These facts were uncontroverted. The court further observed that the original complaint alleged that "[s]ignificant amounts of construction debris" including "dust and airborne fiberglass" were placed into the air without proper controls or protections, which caused claimant's respiratory illness. The First Amended Complaint attempted to plead into coverage by not describing the "construction debris" or claimant's "bodily injury." But it was undisputed that claimant's alleged injuries included bronchitis resulting from fiberglass exposure, as was made clear by her demand letter, initial complaint, and medical records.

The Eleventh Circuit agreed with the district court that the pollution exclusion was unambiguous. It applied to the construction debris complained of – fiberglass particulates and other bits of dust in the air – that caused irritation to her lungs, eyes, and skin when it contaminated the air she breathed.

Thus, the court concluded that this was one of the rare cases where uncontroverted facts place the claim outside the scope of coverage and the amended complaint was an attempt to plead into coverage despite those uncontroverted facts. The insurer therefore did not breach its duty to defend.

The case is *BBG Design Build, LLC v. Southern Owners Ins. Co.*, No. 19-14508 (July 23, 2020).

Fifth Circuit Applies Eight Corners Rule to ATV Accident Claim, Finds Narrow Exception Allowing for Consideration of Extrinsic Evidence Inapplicable

After certifying a question to the Texas Supreme Court on whether the eight corners rule depends on the existence of a groundless-claims clause, the Fifth Circuit reversed the district court's ruling in favor of an insurer on the duty to defend, finding that the lower court improperly considered facts extrinsic to the complaint in assessing the insurer's duty.

The Case

A ten-year-old boy died in an ATV accident while under the temporary care of his paternal grandparents. His mother sued the grandparents alleging they were negligent in allowing him to operate the ATV at his young age, without instruction, supervision, or a helmet. The grandparents sought a defense under their homeowner's policy.

The insurer initially defended under a reservation of rights, but then sought a declaration that it had no duty to defend based on two exclusions. The first was the motor-vehicle exclusion. It negated coverage for claims arising from the use of an all-terrain vehicle off an insured location, meaning beyond the residence premises. The second was the insured exclusion, which barred coverage for bodily injury to any insured, including residents of the insured's household who are relatives or under the age of 21 and in the care of an insured person.

The complaint itself did not bring the claim within these exclusions. Instead, the complaint alleged that the boy was operating the ATV while on the grandparents' property and that the decision to allow the boy to use the ATV was made at their house. It also alleged that the boy resided with his mother and maternal grandmother at a separate residence.

To support its position, the insurer submitted a vehicle crash report indicating the accident happened off the grandparents' premises. It also included an admission from the insured that they were the boy's grandparents, along with a court order appointing them as joint-managing conservators.

The insureds disputed that this extrinsic evidence could be considered in assessing the insurer's duty to defend, pointing to Texas's eight corners rule (the duty to defend is determined by the facts alleged in the complaint and the coverage provided by the insurance policy). The district court noted that the homeowner's policy did not contain language requiring an insurer to

defend all actions against the insured, even if groundless, false, or fraudulent. Because the insurer's duty to defend under the policy arose only if a suit alleged claims for which coverage applies, the district court concluded that it could consider the extrinsic evidence submitted by the insurer. Based on this extrinsic evidence, it ruled that the insurer had no duty to defend.

On appeal, the Fifth Circuit certified a question to the Texas Supreme Court as to whether the absence of the groundless-claim language created an exception to the eight corners rule. The Texas Supreme Court said no.

The Fifth Circuit's Decision

On return to the Fifth Circuit, the insurer argued that a different exception applied that permitted the consideration of extrinsic evidence. In the past, the Fifth Circuit has applied a narrow exception to the eight corners rule, "where it is initially impossible to discern whether coverage is potentially implicated and when the extrinsic evidence goes solely to a fundamental issue of coverage which does not overlap with the merits of or engage the truth or falsity of any facts alleged in the underlying case."

The Fifth Circuit acknowledged this "very narrow" exception but found that it did not apply.

It first considered the motor vehicle exclusion. The operative complaint did not include the location of the accident. The insurer relied on a crash report that showed where the accident happened. But the court said this evidence overlaps with the merits or engages the truth or falsity of facts alleged by the boy's mother. The court pointed to allegations in the complaint suggesting that the grandparents committed negligent acts or omissions on their property. The court said that the insurer focused only on the location of the accident and that the extrinsic evidence was "too entwined in the merits" for the narrow exception to apply.

Turning to the "insured exclusion," the Fifth Circuit found that the lower court should not have considered evidence showing that the grandparents were joint-managing conservators because it contradicted the allegations in the complaint that the boy resided with his mother. Considering the extrinsic evidence to determine if the boy resided with his grandparents', the court stated, "would impermissibly 'engage the truth or falsity of the facts alleged in the underlying case.'"

The court held that the eight corners rule applied and that the narrow exception did not. As the operative pleading contained allegations within its four corners that is potentially covered within the four corners of the policy, the Fifth Circuit held that the insurer had a duty to defend and reversed the district court's decision to the contrary.

The case is *State Farm Lloyds v. Richards,* No. 18-10721 (5th Cir, July 20, 2020).

Illinois Appellate Court Finds Insurer Had No Duty to Defend Conversion Claim Despite Insured's Contention of Mistake

An Illinois appellate court found that an insurer had no duty the defend a policyholder against a claim alleging conversion of construction materials. An unpled fact, first asserted by the insured in a declaratory judgment action, was insufficient to trigger the insurer's duty to defend.

The Case

Janet Hula, Michelle Hula-Miller, and Eric Miller filed a two-count complaint against Jerome McKeown and McKeown Classic Homes, Inc., alleging breach of contract and conversion stemming from McKeown's work on claimants' property pursuant to a construction agreement.

Relevant here, Count II (conversion) alleged that McKeown, "without authority and knowledge of [claimants], took hundreds of planks of knotty pine wood, a Dutch door, a hand sink,

four windows and [a] glass door knowingly belonging to the [claimants] without [claimants'] consent." The complaint alleged that claimants demanded McKeown return the above items, but he refused to do so. Claimants alleged that they suffered $25,000 in damages as a result of McKeown's conversion. Claimants further alleged that McKeown's acts were "willful, wanton, malicious, and oppressive and were undertaken with the intent to defraud" and that they "justify the awarding of punitive damages."

McKeown tendered the claim to its insurer, Pekin Insurance Company, who denied the claim. Pekin asserted that the conversion claim did not allege an "occurrence" as defined in the policy, but rather, an intentional act to deprive claimants of their own property. Pekin then sought a declaration that it had no duty to defend McKeown in the underlying action.

McKeown then asserted a counterclaim, contending that any materials removed from the site were taken by a demolition subcontractor by mistake.

Pekin and McKeown filed cross-motions for summary judgment. The trial court granted Pekin's motion for summary judgment and McKeown appealed.

The Appellate Court's Decision

The appellate court affirmed.

The court rejected McKeown's argument that the trial court improperly based its decision solely on the allegations in the underlying complaint and did not consider the facts McKeown pled in its counterclaim for declaratory judgment.

The court first distinguished Illinois Supreme Court precedent that permitted consideration of extrinsic evidence in assessing the duty to defend because under that precedent, the additional facts were actually pled in the underlying action. Here, they were first raised in the insured's counterclaim in the declaratory judgment action.

In discussing the "true-but-unpleaded-facts" doctrine, the court observed that the doctrine was not meant to apply where the only extraneous facts the insurer possessed were supplied by the insured. That's because the insurer has no way of knowing whether those facts are true without conducting its own independent investigation. Thus, facts the insured gives to the insurer should be viewed with suspicion when determining the duty to defend.

The court noted that the allegations in McKeown's counterclaim – that the allegedly converted items were "mistakenly removed by a subcontractor" – was not known to Pekin until McKeown included the explanation in its counterclaim for a declaratory judgment. McKeown never provided an affidavit or other communication to inform Pekin of the identity of the subcontractor purportedly responsible for taking the items from claimants' property, further hindering any prospect of investigating the validity of McKeown's claim for coverage under the policy.

The court emphasized that where the insurer is unaware of a purportedly true but unpleaded fact, that fact may not be considered in determining the duty to defend. Thus, the court held that because the conversion claim clearly alleged intentional conduct by McKeown, there was no accident or "occurrence" under the policy, and Pekin's duty to defend was not triggered.

The case is *Pekin Ins. Co. v. McKeown Classic Homes, Inc*., No. 2-19-0631 (Ill. App. 2d July 29, 2020).

New Jersey Supreme Court Instructs That Made-Whole Doctrine Does Not Apply to Self-Insured Retentions

Upon certified question from the Third Circuit, the New Jersey Supreme Court ruled that the doctrine that an insured must be made whole before an insurer may recover from a third-party does not apply to first-dollar risk that is allocated to an insured under a self-insured retention or deductible.

The Case

An Asbury Park fireman was injured while fighting a fire. He filed a workers' compensation claim against the City of Asbury Park. The City had a workers' compensation policy with a $400,000 self-insured retention. The City paid the full amount of the self-insured retention to the employee, and the insurer paid $2.6 million, the amount exceeding the retention.

The employee then sued a third-party for injuries he sustained in the fire. He settled for $2.7 million and later agreed that about $936,000 would be refunded to the City and the insurer. The insurer claimed it was entitled to be reimbursed in full before the City could recover the amount of its self-insured retention. The City contended that under the made-whole doctrine, it was entitled to be reimbursed in full before the insurer could assert its subrogation rights. The dispute was litigated and the district court ruled in favor of the insurer on the ground that the City had no insurance for the first $400,000 and the parties agreed under the subrogation provision in the workers' compensation policy that the insurer is subrogated to all of the City's rights of recovery.

On appeal, the Third Circuit certified a question to the New Jersey Supreme Court:

> Whether, under equitable principles of New Jersey law, the made-whole doctrine applies to first-dollar risk that is allocated to an insured under an insurance policy, i.e., a self-insured retention or deductible.

The New Jersey Supreme Court answered the question "no."

The made-whole doctrine provides that an insurer cannot assert a subrogation right until the insured has been fully compensated for his or her injuries. Although New Jersey courts have long recognized this doctrine, it has never been applied to first-dollar risk such as deductibles and self-insured retentions.

The court explained that a self-insured retention is an amount of risk that the insured has agreed to assume in exchange for a lower premium cost for the insurance policy. Where an award in a subrogation action is less than the total loss, to place priority of recovery with the insured would in effect convert the policy into one without a self-insured retention. Such interference with the contract, the court noted, would essentially write a better policy for the insured than the one purchased. That would result in an "unbargained for, unpaid for, windfall" to the insured. The made-whole doctrine does not override the parties' agreement.

But since the court was answering a certified question of law, it did not apply the legal conclusion to the contract at issue. It said that the made-whole doctrine requires a close examination of an insurance contract's provisions to determine whether the doctrine will apply, including the effect of reading together provisions relating to self-insured retentions or deductibles and subrogation rights. "Read together, if the Policy unambiguously provides [the insurer] with all of the City's rights to recovery against third-party tortfeasors in the event that [the insurer] makes a payment under the Policy, that conclusion means that, under our decision today, the made-whole doctrine would not apply in this case."

The court concluded by stating that under equitable principles, the made-whole doctrine does not apply to first-dollar risk that is allocated to an insured.

The case is *City of Asbury Park v. Star Ins. Co.,* No. 083371 (N.J. June 29, 2020).

Ninth Circuit Finds Advertising Injury Provisions Did Not Cover Trademark Claims

In a pair of unpublished decisions, the Ninth Circuit upheld rulings in favor of insurers that found trademark infringement claims did not implicate the use of another's advertising idea and were distinct from infringement of trade dress or slogan.

Premier Pools Mgmt. Corp. v. Colony Insurance Company, No. 18-16551 (9th Cir. July 20, 2020), involved a trademark infringement suit accusing the insured of infringing the name "Premier Pools." The insured argued that the insurer had a duty to defend under the offense involving the "use of another's advertising idea in your advertisement." The district court found that the "use of an advertising idea" offense applies only when the infringement deals with an advertising idea itself, *i.e.,* a way to solicit customers. Copying a competitor's product and selling that product, the court noted, does not constitute and advertising idea.

On appeal, the Ninth Circuit agreed that infringing a name of a company is not tantamount to taking another's advertising idea. The court also agreed that the claim did not qualify as an infringement of a slogan. A slogan is a brief attention-getting phrase used in advertising. A name is typically not a slogan.

In *Scottdale Insurance Company v. PTB Sales, Inc.,* No. 19-55350 (9th Cir. July 16, 2020), the insured was sued for trademark infringement and other business torts for disseminating copies of another company's manuals with the insured's product labels. The Ninth Circuit affirmed the district court's award of summary judgment in favor of the insurer. The insured failed to show that the claims against it implicated covered offenses under the personal and advertising injury

coverage. The claims did not implicate the use of another's advertising idea. Nor did they raise any facts related to trade dress – the total image of the labels.

And even if they did, the court found that the intellectual property exclusion expressly barred coverage for trademark infringement. Plus, the prior publication and known injury exclusions were implicated because the alleged wrongful conduct began before the policy was issued.

The court further found that the insurer properly reserved its rights to recoup its defense costs as well as the amounts it paid toward settlement of the claim.

Virginia Circuit Court Finds No Coverage for Constructive Fraud Claim Under CGL Policy

A Virginia court found that a claim for constructive fraud claim did not involve an "occurrence" because detrimental reliance was a natural and probable consequence of the alleged misrepresentation.

The Case

The underlying plaintiff, Hsin Yen, filed a complaint alleging that his home suffered damage during a structural fire. Yen's insurer, Erie Insurance Group, put him in contact with Gregory Spalding of Spalding Enterprises in February 2019 to facilitate repair of the home.

Mr. Spalding continually represented to Yen that the project would be completed by no later than October 2019. Yen deposited $300,000 with Spalding Enterprises based upon that representation. However, in September 2019, Mr. Spalding informed Yen that the project wouldn't be complete until November 2019. Yen then terminated Spalding Enterprise due the deadline change.

Spalding Enterprise filed a claim for coverage under its commercial general liability policy. Erie denied coverage. Erie filed a declaratory judgment action in Virginia state court seeking a ruling that it had no duty to defend or indemnify Spalding Enterprises. The parties cross-moved for summary judgment.

The Decision

The court granted Erie's motion for summary judgment, finding that the facts alleged in the underlying litigation did not implicate an occurrence under the policy.

The court noted that the complaint alleged constructive fraud, which required an intentional act. A misrepresentation must be made with the intent to induce belief and reliance. The court noted that, under Virginia law, coverage is precluded for an intentional act only if it is "alleged that the insured subjectively intended or anticipated the result of its intentional act or that objectively, the result was a natural or probable consequence of the intentional act." Here, the court found that "Yen's detrimental reliance [wa]s unquestionably a natural or probable consequence of the misrepresentations upon which Mr. Yen was intended to rely." For this reason, the court concluded, any alleged constructive fraud was not an occurrence under the policy.

The case is *Erie Ins. Exch. v. Spalding Enters.* Case, No. CL-2020-4535 (Cir. Ct. Va. July 14, 2020).

Pennsylvania Federal Court Finds No Coverage for Human Trafficking And Wage Violations Claims

A federal court in Pennsylvania found no coverage for human trafficking and wage violations claims under a miscellaneous professional liability coverage policy because the complaint did not allege negligent acts, errors, or omissions in the provision of placement services.

The Case

Jose Enrique Castillo Chaidez was hired as a truck driver by the insureds, Carl Hemphill and MGJ Labor Solutions, LLC. Castillo later sued Hemphill and MGJ Labor Solutions, alleging they forced him to undertake activities beyond the scope of his agreed upon job responsibilities, withheld money to which he was entitled, lodged him in overcrowded and unsanitary housing, and threatened him with arrest and permanent expulsion from a temporary-worker visa program if he refused to acquiesce to those conditions.

Hemphill noticed the claim to its insurer, Landmark Insurance Company. The Landmark policy covered MJC Labor and Hemphill for claims "arising out of a negligent act, error or omission . . . in the performance of providing a permanent and/or temporary employee placement services." Landmark denied coverage on the basis that the underlying complaint did not allege negligent acts, errors or omissions in the provision of placement services. Instead, Landmark argued that the underlying complaint alleged wrongful conduct by Hemphill or MJG Labor *after* Castillo's employment placement and *during* his employment, thereby falling outside of coverage.

Hemphill and MJG labor filed a declaratory judgment action in federal court in the Eastern District of Pennsylvania seeking a ruling that Landmark was obligated to defend them in the underlying action and reimburse them for their attorneys' fees and costs. Landmark moved to dismiss.

The Decision

The court granted Landmark's motion. Applying Pennsylvania law, the court concluded that the allegations in the underlying complaint did not arise out of a negligent act, error, or omission in providing placement services to an employee. Rather, the court concluded, the complaint focused on purportedly intentional conduct after Castillo was placed.

The court rejected the insureds' argument that the underlying complaint stated an implicit claim of negligent misrepresentation regarding Castillo's start date, compensation, and living conditions. The court noted that the complaint did not allege any facts that Castillo relied upon a representation concerning housing to his detriment.

The court also rejected the insureds' argument that Landmark owed them a defense because they had a reasonable expectation of coverage under the policy based upon Landmark having previously defending them in a similar action. The court noted that the express terms of the policy govern the parties' reasonable expectations, and here, Landmark declined coverage solely on the basis of the policy as worded. The court also noted that Landmark had expressly defended the prior action under a reservation of rights. The court reasoned that if it would have been permissible for Landmark to withdraw its defense in the previous action after it agreed to defend, it certainly could decline to extend coverage in this action in the first instance.

The case is *Hemphill v. Landmark Ins. Co.*, No. 19-5260 (E.D. Pa. July 9, 2020).

False Reporting of Lab Results Is Barred by Professional Services Exclusion, Kentucky Federal District Court Holds

A federal court in Kentucky held that a professional services exclusion in a business insurance policy barred coverage for a lawsuit alleging false reporting of blood laboratory results.

The Case

Compliance Advantage, LLC, d/b/a C.A.L. Laboratory Services and Reliable Lab provides laboratory testing services, including blood and urine testing, to various businesses, including addiction counseling centers.

Heather Criswell and Paula Maddox filed a civil action against Compliance Advantage in Kentucky state court for reporting false laboratory results, which they allege resulted in economic as well as emotional damages.

Maddox, operated Counselor's Cottage, an addiction counseling agency that utilized Compliance Advantage's laboratory services. She alleges that false laboratory reports, false testing, and false reported results caused her and her contractor physicians and employees to lose business and in many cases their occupation.

Heather Criswell was a patient of the Counselor's Cottage and alleged that Compliance Advantage falsely and negligently reported false laboratory results which, when reported to proper governmental channels, caused the removal of her child from her custody.

Compliance Advantage had a business insurance policy with State Farm. The policy contained an exclusion for bodily injury, property damage, or personal and advertising injury "arising out of the rendering or failure to render any professional service or treatment.'"

State Farm filed a declaratory judgment action in federal court seeking a ruling as to its duties to defend and indemnify Compliance Advantage in the state court action. State Farm argued that the professional services exclusion in the policy applied to all claims alleged in the Boyd County action, and therefore, it was not obliged to defend or indemnify Compliance Advantage.

The Decision

Based on the professional services exclusion, the court found that State Farm had no duty to defend or indemnify Compliance Advantage in the underlying lawsuit.

Applying Kentucky law, the court found that the claim fell within the exclusion because the acts of taking samples and forwarding those results to the patients of Counselor's Cottage, was "treatment, advice or instruction of any medical, surgical, dental, x-ray or nursing services," conducted by medical professionals as well as other employees, who were "hir[ed], train[ed] or monitor[ed]" by Compliance Advantage and were involved in the "rendering" or "failure to render . . . any professional service." The court also noted that, in their discovery responses, claimants specifically asserted that Compliance Advantage breached its "professional duty of care," language which mirrored the exclusion.

Criswell and Maddox were parties to the declaratory judgment action and argued that if the errors resulted from negligence at the hands of incompetent staff, equipment malfunction or some other "ministerial conduct" during the process, the professional services exclusion would not apply. In support of their argument, they presented an affidavit from a former Compliance Advantage employee who stated that the errors committed by Compliance Advantage were not intentional and suggested that erroneous data input, equipment malfunction and incompetent staff may be the cause.

The court was unpersuaded. It emphasized that State Farm was not relying on an intentional acts exclusion, but rather, contended that the errors, whether intentional or negligent, and whether committed by a doctor or lab tech, fall within the professional services exclusion. The court agreed with the insurer, finding that the application of the professional services exclusion in this manner is consistent with Kentucky's expansive reading of the phrase "arose out of." The court found that even if the errors were due to negligence or equipment malfunction,

they were an integral part of the overall professional services provided by Compliance Advantage, and that all that is required for the exclusion to apply is some causal connection.

The case is *State Farm Fire & Cas. Co. v. Compliance Advantage*, CV-19-41-HRW (E.D. Ken. July 7, 2020).