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ALERT

Accident During Traffic Stop Is Covered under Professional Liability Policy, Not Automobile Liability Policy

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The United States District Court for the Central District of California has held that an insurer that issued a combined professional and general liability policy, and not an insurer that issued an automobile liability policy, owed a duty to indemnify their mutual insured because the insured's conduct in negligently directing traffic at an intersection did not arise out of the use of an automobile. *Scottsdale Indem. Co. v. Lexington Ins. Co.*, 2012 WL 6590716 (C.D. Cal. Dec. 18, 2012).

The insured, a private security company, was providing an escort for a funeral procession. During the procession, an employee of the insured stopped his motorcycle at an intersection in order to prevent traffic from going through the intersection. The motorcycle was a retired police motorcycle equipped with flashing amber lights, which the employee left on in the intersection. After honking his horn a few times, the employee dismounted and began directing traffic on foot. Several seconds later, another motorcyclist, who had a green light, was not able to stop and hit a vehicle stopped in front of him, sustaining fatal injuries.

The heirs of the other motorcyclist sued the insured security company. The insured had both a combined professional and general liability insurance policy and an automobile liability insurance policy that were issued by two different insurers. The professional and general liability insurer denied coverage and did not defend the insured on the basis that an automobile exclusion in its policy precluded coverage. The automobile liability insurer, however, defended the insured and settled the claim against the insured. The automobile liability insurer then brought a lawsuit seeking indemnification for the

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amount of settlement and the costs of defense.

The district court held that the professional and general liability insurer had a duty to indemnify under its policy, and that the automobile liability insurer did not have a duty to indemnify. The court reasoned that the policies at issue were mirror images of each other: the automobile insurance policy afforded coverage for the "use" of a covered automobile; the professional and general liability insurance policy afforded other specified coverage but excluded coverage for the "use" of an automobile. The court noted that, although only a "minimal causal connection" was required between the use of the automobile and the accident to qualify as "use" of a covered automobile, the claim arising out of the incident did not meet that threshold. While the lights and horn were used on the insured employee's motorcycle, the court determined that the accident was caused by the employee stepping off his motorcycle and negligently directing traffic. The motorcycle was merely "incidental" to the insured employee's efforts and "did not rise to the level of a predominating cause."

The court also rejected the professional and general insurance carrier's argument that the "philosophical underpinnings" of the policies should have led to coverage under the automobile liability insurance policy because a professional liability insurance policy is "by its nature . . . expected to take into account an insured's professional duties," and the employee was carrying out his professional duties in directing traffic.

The district court also held that the automobile liability insurer could not assert a claim against the other insurer for breach of the duty to defend under an equitable subrogation theory because the automobile liability insurer "stepped into the shoes" of the insured, and the insured had already received a complete defense. However, the automobile liability insurer could recover some of the defense expenses under an equitable indemnity theory because the allegations in the complaint could encompass facts showing that the loss arose out of the use of a covered automobile in addition to the facts tending to show that the loss would be covered under the professional and general liability policy in addition to the automobile liability policy. Applying its equitable discretion, the court determined that the insurers were to share equally in the defense costs.

The opinion is available here.