

Eighth Circuit Rules That Policyholder's Failure To Allocate Settlement Between Covered And Non-Covered Claims Is Fatal To Suit Against Insurers

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The Eighth Circuit ruled that excess insurers have no obligation to indemnify a policyholder's lump sum settlement of two underlying suits, only one of which was potentially covered by the policies. *UnitedHealth Grp. Inc. v. Executive Risk Specialty Ins. Co.*, 2017 WL 3910115 (8th Cir. Sept. 7, 2017).

UnitedHealth settled two underlying suits with a single lump-sum settlement. Only one of the suits was potentially covered by UnitedHealth's excess liability policies. UnitedHealth sued its insurers seeking indemnity for the settlement and defense costs for one of the suits. A Minnesota federal district court ruled in the insurers' favor. The court held that UnitedHealth failed to meet its burden of allocating the settlement between potentially covered and non-covered claims. The Eighth Circuit affirmed.

Addressing this matter of first impression under Minnesota law, the court held that UnitedHealth bears the burden of allocating between covered and non-covered claims. The court further held that it is insufficient for UnitedHealth "to show simply that its \$350 million settlement included a covered claim of an unspecified amount." Rather, it must allocate between potentially covered and non-covered claims "with enough specificity to permit a reasoned judgment about liability." The court concluded that UnitedHealth failed to meet this standard, explaining that evidence relating to pre-settlement rulings and expert testimony about the value of each suit failed to provide "more than a speculative basis" on which to allocate the settlement.

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