

Loss Of Wine Bottles In Ponzi Scheme Not Covered By Valuable Items Policy, Says Tenth Circuit

09.27.19



(Article from *Insurance Law Alert*, September 2019)

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The Tenth Circuit ruled that policyholders were not entitled to recover for the loss of wine bottles never delivered by a retailer who had been operating a Ponzi scheme, reasoning that the policyholders had never actually “owned” or “possessed” the wine. *Hasan v. AIG Prop. Cas. Co.*, 2019 WL 4019902 (10th Cir. Aug. 27, 2019).

The policyholders ordered wine from Premier Cru, a California-based wine merchant. In actuality, however, Premier Cru did not order or deliver much of the wine that it promised; rather, its president operated a Ponzi scheme and spent most of Premier Cru’s funds on personal use. In a guilty plea on wire fraud charges, Premier Cru’s president admitted to selling \$20 million of phantom wine. After Premier Cru filed for bankruptcy, the policyholders submitted a claim to AIG for approximately \$1.7 million – the asserted market value of the wine that they purchased but never received.

The AIG policy insured against “direct physical loss or damage to valuable articles anywhere in the world.” Valuable articles is defined as “personal property you own or possess.” AIG denied coverage on the ground that the policyholders did not own or possess the wine at issue, and that the loss at issue was a loss of money, which is not insured by the policy. In ensuing litigation, a Colorado district court granted AIG’s summary judgment motion, holding that even assuming the policyholders “owned” the wine, they could not establish physical loss or damage. The Tenth Circuit affirmed on different grounds.

The Tenth Circuit ruled that the loss was not insured because the policyholders never owned or possessed the undelivered wine bottles. The court explained that there was no evidence that Premier Cru ever purchased the ordered bottles in the first place. The court stated: “Absent evidence that any of the 2,448 ordered bottles of wine were actually purchased by Premier Cru, much less specifically purchased for Plaintiffs, Plaintiffs have failed to carry their burden on an essential element of their insurance claim – that there are unaccounted for bottles of wine that they owned.”

As discussed in our [March 2018 Alert](#), a California appellate court similarly denied coverage under a valuable possessions policy for wine-related loss in *Doyle v. Fireman’s Fund Ins. Co.*, 2018 WL 1177929 (Cal. Ct. App. Mar. 7, 2018). There, the policyholder purchased nearly \$18 million of purportedly vintage wine that he later discovered to be counterfeit. The court held that there was no “direct and accidental loss or

damage to covered property” because there was no physical harm to the wine, but rather only financial loss as a result of the fraudulent sale.

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