

Eleventh Circuit Rules That Breach Of Contract Exclusion Unambiguously Bars Coverage For Underlying Suit (Insurance Law Alert)

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Affirming an Alabama district court decision, the Eleventh Circuit ruled that an insurer had no duty to defend or indemnify underlying losses based on a breach of contract exclusion. *Ala. Space Sci. Exhibit Comm’n v. Markel Am. Ins. Co.*, 2022 WL 1667904 (11th Cir. May 25, 2022).

The policyholder entered into an agreement to produce and fund a children’s television show. When the policyholder stopped funding, the programming company filed an arbitration demand. Markel denied the producer’s request for coverage based on an exclusion for claims for “any actual or alleged liability . . . under any written or express contract or agreement, except to the extent that [the policyholder] would have been liable in the absence of such contract or agreement.” After the policyholder received an unfavorable arbitration award, it sued Markel, alleging breach of contract and bad faith. The district court granted Markel’s summary judgment motion, and the Eleventh Circuit affirmed.

The policyholder argued that the lack of expansive language in the breach of contract exclusion (*e.g.*, “based upon, arising out of or in any way involving”) as compared to other policy exclusions indicated that the breach of contract exclusion was meant to be construed narrowly. The court explained that even if construed narrowly, the exclusion still applied because the only basis for the damages awarded was the underlying written agreement. In addition, the policyholder contended that the “plethora of allegations of wrongdoing” in the Statement of Claim suggested potential tort liability, separate and apart from the breach of contract claims. The court rejected this assertion as well, explaining that the alleged facts did not support such independent causes of action.

Further, the court held that the exclusion applied despite the filing of a claim for breach of the implied duty of good faith and fair because a breach of the duty is a breach of contract and Alabama law does not recognize an independent tort arising out of a breach of contract. Finally, the court held that a *quantum meruit* claim was also subject to the breach of contract exclusion, emphasizing that when an express contract exists, there is no viable claim for *quantum meruit*.

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