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Ninth Circuit Refuses to Enforce Contract Exclusion in $20 Million D&O Dispute

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A recent Ninth Circuit decision—*Las Vegas Sands, LLC v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA*, 2025 WL 3754348 (9th Cir. Dec. 29, 2025) —reversed a Nevada district court's ruling in favor of a D&O insurer that had refused to cover a lawsuit asserting both contract and tort claims under the policy's contractual liability exclusion. The ruling is a timely reminder for policyholders about why they should carefully scrutinize coverage denials, especially overbroad readings of contract exclusions, and consider pursuing insurers who wrongfully deny coverage.

Background

A casino and resort company sought insurance coverage from its directors and officers (D&O) liability insurer, seeking coverage for over $20 million in defense and settlement costs incurred in a lawsuit brought in Nevada state court for breach of contract, fraud, and quantum meruit.

The insurer denied coverage based on a breach of contract exclusion. That exclusion provided that the insurer need not cover claims "alleging, arising out of, based upon or attributable to any actual or alleged contractual liability of the company under any express contract or agreement." Coverage litigation ensued.

The district court ruled in favor of the insurer, reasoning that it "cannot be disputed that the [underlying litigation] was a claim arising out of an alleged contractual liability." *Las Vegas Sands, Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.*, 2024 WL 4279382, at *3 (D. Nev. Sept. 23, 2024).

The policyholder appealed and won. In rejecting the insurer's overbroad reading of the contract exclusion, the Ninth Circuit pointed out that the complaint included both covered and purportedly excluded causes of action. It also criticized the insurer for citing no caselaw suggesting that the presence of excluded causes of action bars coverage for defense of the entire action and, in fact, explained the insurer's own cases reached the opposite conclusion.

Looking at the specifics of the underlying lawsuit, the court reasoned that it was "not evident" that the exclusion "should have precluded coverage of defense or settlement costs arising from the quantum meruit and fraud claims." The Ninth Circuit reasoned that the quantum meruit claim "could not have arisen out of the" contract because under Nevada law, "quantum meruit claims are not actionable where there is an express contract or agreement." The fraud claim likewise provided an insufficient nexus to contractual liability to trigger the exclusion. On remand, the district court was required to undertake a "separate analysis" of each cause of action.

Takeaways for Policyholders

Sands is a timely reminder for policyholders on four fronts.

First, policyholders should pay close attention to the text of the governing insurance policy. For example, the applicable exclusion here had "arising out of" causation language that is broader than other exclusions available on the market. The applicable exclusion was also about "express" contracts or agreements, which could, depending on the circumstances differ from contracts that might be implied by law. Small linguistic differences like this might seem immaterial but they can have big—even outcome-determinative—consequences.

Second, policyholders should not take coverage denials at face value because such denials can be—and often are—unfounded. This is particularly true for contract exclusions, even those with broad causation language like the policy in *Sands*. As the Ninth Circuit made clear, many states refuse to enforce contract exclusions on a blanket basis and instead require a more nuanced approach, like the "separate analysis" of individual causes of action endorsed by the Ninth Circuit under Nevada law.

Third, policyholders should remember that courts give them the benefit of the doubt in coverage litigation over exclusions, which must be construed narrowly against the insurer that drafted the policy and in favor of coverage. Likewise, to trigger a liability insurer's defense obligations, a policyholder need only show the *potential* for coverage, not that the policy, in fact, covers the claims or losses as alleged. Those are extremely powerful tools that can be leveraged in close or contested questions of policy interpretation.

Finally, policyholders should not be wary about standing up to insurers who wrongfully deny coverage. Here, by pursuing the insurance policy rights it was owed in trial and appellate court, the policyholder may end up with substantial insurance proceeds that otherwise would have been wrongfully withheld by its insurer. Consulting with experienced brokers, coverage counsel, and other risk professionals early on in the claims process—and especially after receiving a denial letter tied to an exclusion—can help challenge the overbroad application of exclusions and ensure companies and their directors and officers are maximizing the value of their D&O insurance coverage.

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