

Judge to 'Ponzi Disciples' – Don't Look to Insurers

Insurance Law Update

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U.S. District Court for the District of South Carolina

A South Carolina federal judge granted summary judgment in favor of Continental Casualty Company (CNA) in a declaratory action brought by CNA against its insureds seeking rescission and a determination that it had no defense or indemnity obligations under its professional liability policy with respect to underlying litigation. In *Continental Cas. Co. v. Battery Wealth, Inc., et al*, case number 2:09-cv-00505, the U.S. District Court for the District of South Carolina ruled that CNA had no defense or indemnity obligations to its insureds, Battery Wealth, Inc. and Battery Wealth CEO Wayne Cassady, for any claims stemming from a \$66 million investment fraud led by Battery Wealth's former vice president and partial owner, Albert E. Parish, Jr.

CNA filed its declaratory judgment action on March 9, 2009 after a number of lawsuits were filed against the insureds alleging that they had invested money with Parish on the advice of Battery Wealth and Cassady. Prior to the underlying lawsuits, Parish pled guilty to criminal allegations related to his investment scheme, which included that beginning in 2003, he knowingly devised or participated in a scheme to defraud, made false representations and acted willfully with an intent to defraud. Parish was sentenced to 24 years in federal prison and was required to pay more than \$66 million in restitution. After the filing of the related, and inevitable, civil lawsuits, CNA filed its declaratory judgment action.

In granting CNA's summary judgment motion, U.S. District Judge William Bertlesman relied heavily on the policy's "prior knowledge clause" holding that "[i]t is self-evident that Ponzi's disciple, Parish, had knowledge of his own acts, that they were fraudulent and that he 'had basis to believe' that these fraudulent acts 'might reasonably be expected to be the basis of a claim' . . . [beginning] as early as August 2003, approximately three years before the effective date of the 2006 – 2007 policy."

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