

# Law360: How Del. 'Arising Out Of' Ruling May Affect Insurance Cases

In the recent decision in *Ace American Insurance Co. v. [1]* the Delaware Supreme Court insurer Chubb's broad interpretation of the words "arising out of" in a professional services exclusion.

In doing so, the court confirmed that long-standing, fundamental principles of insurance policy interpretation in the context of policy exclusions remain intact.

Specifically, in affirming the Superior Court of Delaware's decision, the Supreme Court reiterated that "exclusion[s] must be interpreted narrowly and in favor of coverage,"[2] and, in that context, the phrase "'arising out of' requires 'some meaningful linkage between the two conditions imposed in the contract.'"[3]

Although *Ace v. GRI* deals with a professional services exclusion, the court's thorough analysis of the phrase "arising out of" extends its application to a wide range of exclusions employing similar prefatory language, significantly increasing the decision's import in insurance coverage litigations.

*Ace* involved a policyholder, Guaranteed Rate Inc., which was a mortgage loan servicing provider and an approved lender in the federal government's Direct Endorsement mortgage insurance program.

This federal program permitted Guaranteed Rate to endorse single-family residential mortgage loans

for insurance and guaranty by the \_\_\_\_\_ and the \_\_\_\_\_

[4] In tandem with its endorsement, Guaranteed Rate was required to certify to the government that each loan and GRI's loan program met FHA and VA rules.

In 2017, a former Guaranteed Rate employee brought a qui tam action against GRI, alleging that Guaranteed Rate violated the False Claims Act by falsely certifying to the government that the loans it endorsed were eligible for government insurance.

In connection with the qui tam, the \_\_\_\_\_ and the \_\_\_\_\_ issued a civil investigative demand to Guaranteed Rate, notifying it that the government was investigating allegations that Guaranteed Rate violated the FCA by originating and underwriting federally insured mortgage loans that it falsely certified had met loan-approval requirements.

Guaranteed Rate sought insurance coverage for the CID and the government's subsequent settlement demand under a management liability policy that Guaranteed Rate purchased from Chubb.

Chubb denied coverage on the grounds that (1) the CID was not a "claim" under the policy, and (2) the settlement payment made in connection with the CID triggered the policy's professional services exclusion, which bars coverage for claims "alleging, based upon, arising out of, or attributable to any Insured's rendering or failure to render professional services."

Guaranteed Rate filed an action in Delaware Superior Court seeking to obtain insurance coverage.

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