

Insurance Company Need Not Defend Accountant Who Lost Sensitive Client Information

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The U.S. Court of Appeals for the Seventh recently ruled that Nationwide Insurance Co. has no duty to defend or indemnify an accountant who lost sensitive personal information from client files. According to the lawsuit, the accountant's loss of the information stemmed from the theft of a CD containing confidential client information from the accountant's personal car. The CD contained the social security numbers, names, and birth dates of over 30,000 beneficiaries of the accounting firm's clients, the Central Laborers' Pension Fund, Central Laborers' Welfare Fund, and Central Laborers' Annuity Fund. After the Funds sued the accounting firm to recoup \$200,000 (the costs of credit monitoring and insurance), Nationwide sought a judgment from federal court to establish that it had no duty to defend the accounting firm under the "in care of" and "business" policy exclusions. As the court interpreted the coverage, the "in care of" exclusion applied under Illinois law because the sensitive information was in an employee's care at the time of loss and because care of the CD was a necessary element of the employee's work for the client. The "business" insurance policy exclusion—which excludes coverage for property damage arising out of or in connection with a business—also was found to apply because the accounting firm is a business whose employee breached the duty to safeguard the Funds' confidential information. Because the two policy exclusions were found to apply, Nationwide was deemed to have no duty to defend or indemnify the accounting firm or the employee for any damages stemming from the lawsuit brought by the Funds.

TIP: This case gives yet another reason for companies to monitor and manage their employees' safeguarding of confidential personal information. While insurance policies can help in the event of a breach incident, they may not always provide coverage.

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