



Companies should carefully evaluate their insurance policy provisions for fraud coverage in light of the Third Circuit's recent decision enforcing a sub-limit on fraud defense coverage in the context of an employee theft.

In *Camico Mutual Insurance Co. v. Heffler Radetich & Saitta LLP*, the Court of Appeals for the Third Circuit [affirmed](#) the lower court's decision granting summary judgment in favor of the insurer after it sued to recoup overpayment on the insured's fraud defense. Heffler Radetich & Saitta LLP ("Heffler") is an accounting firm that, among other things, distributes settlement funds in class action disputes. In 2002, Heffler was appointed as claims administrator to distribute a \$490 million class action settlement. A senior claims analyst at Heffler, Christian Penta, then proceeded to defraud three separate class actions by working with co-conspirators to file tens of millions of dollars in false claims against the settlement funds. Penta purportedly received approximately \$4 million of the fraud proceeds, and he later pleaded guilty to mail fraud and wire fraud. Subsequently, a

member of one of the defrauded classes brought another class action suit, this time against Heffler seeking damages for, among other things, fraud related to Heffler's fiduciary duties as the claims administrator. Heffler timely notified its insurer, Camico Mutual Insurance Co. ("Camico"), of its potential liability. Although Camico funded Heffler's defense, it reserved the right to recover costs and expenses relating to the defense "that exceeded a \$100,000 sub-limit in the policy concerning misappropriation, misuse, theft, or embezzlement." Camico ultimately filed suit against Heffler, seeking recovery of overpayment and a declaratory judgment that it had no obligation beyond the \$100,000 sublimit. The lower court granted summary judgment in favor of Camico and against Heffler. Heffler had argued that the sub-limit did not apply because it did not benefit from the fraud's proceeds when Penta committed fraud because he was not an employee engaged in "professional services" for the benefit of Heffler while committing the fraud. The Third Circuit disagreed, finding Heffler's proposed construction of the policy sub-limit "far too narrow," and noting that such a narrow view would mean that independent criminal conduct would always fall outside the ambit of the sub-limit. The Third Circuit also affirmed the district court's finding that Camico could recover costs. The Third Circuit decision was deemed "not precedential" by the court, meaning that it will not be regarded as precedent that binds the Third Circuit. However, in light of the decision in *Camico*, companies should evaluate their policies to determine if sub-limits could be read to unexpectedly restrict coverage in cases involving independent criminal conduct of an employee that leaves the company in the cross-hairs of litigation.

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