

Based on the arguments presented in the briefs, **Houston Casualty Company (HCC) appears to make the most convincing argument.** Here's a breakdown of why:

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**Focus on the Insuring Agreement and Exclusions:** HCC consistently emphasizes that a duty to defend analysis requires a court to consider the **entire insurance policy**, including the insuring agreement and all applicable exclusions<sup>1</sup>.... They cite *Estate of Sustache v. Am. Family Mut. Ins. Co.*<sup>4</sup>... and other cases to support this well-established principle of Wisconsin insurance law<sup>5</sup>.... HCC meticulously compares the allegations in each of the six underlying lawsuits to the specific language of the HCC Insurance Contract<sup>17</sup>.... They argue persuasively that the lawsuits against Marks arose from his actions and capacities as an **officer and/or director of Titan Global Holdings, Inc. (Titan) and its related entities**, none of which are named in the Declarations of the policy<sup>35</sup>....

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**Limited Scope of the Insuring Agreement:** HCC effectively highlights that the HCC Insurance Contract's insuring agreement **solely covers Marks' conduct "as the Trustee of" the two Children's Trusts, for a fee**<sup>36</sup>.... They argue that the six lawsuits do not allege any wrongdoing by Marks in his capacity as trustee of these specific trusts<sup>17</sup>.... HCC points out that Marks himself, in his insurance application, distinguished between his role as trustee and the management of subsidiaries and investments<sup>42</sup>.

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**Applicability of Exclusion (b)1:** HCC provides a clear interpretation of Exclusion (b)1, which excludes coverage for "liability arising out of the insured's services and/or capacity as: 1) an officer, director, partner..." of any entity **not named in the Declarations**<sup>36</sup>.... They convincingly argue that since Titan and its affiliates are not named in the Declarations (with the exception of the Children's Trusts in the context of Marks' profession as trustee), this exclusion directly applies to the six lawsuits<sup>36</sup>....

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**Challenge to the "Grube Estoppel" Rule:** While Marks heavily relies on the "Grube estoppel" rule<sup>46</sup>..., HCC argues that Marks **misconstrues the actual estoppel rule**<sup>8</sup>.... HCC contends that the proper application of insurance contract law requires consideration of exclusions from the outset and that the *Grube* line of cases does not stand for the proposition that exclusions should be ignored if an insurer denies coverage without first seeking a declaratory judgment<sup>49</sup>.... They cite *Maxwell v. Hartford Union High Sch. Dist.*<sup>14</sup>... to emphasize that exclusions are part of the policy to be considered<sup>57</sup>.

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**Claims-Made Policy and Late Notice for Hawaii Global Action:** HCC raises a significant point regarding the **claims-made nature of the policy** and the Hawaii Global Action<sup>18</sup>.... They argue that the initial counterclaims against Marks were made **prior to the policy period**, thus precluding coverage under the terms of a claims-made policy<sup>19</sup>.... Additionally, they argue that notice for this action was provided significantly late<sup>19</sup>.

While Marks presents arguments regarding the *Grube* rule and the potential for illusory coverage, HCC effectively counters these by focusing on the **specific language of the insurance contract**, the **factual allegations** of the underlying lawsuits, and established Wisconsin insurance law regarding the interpretation of insurance policies as a whole. HCC's detailed analysis of each lawsuit and the application of the insuring agreement and the specific exclusion appear more convincing in demonstrating that the HCC Insurance Contract did not provide coverage for the claims tendered by Marks.