

No Coverage Where No Director or Officer Named as Defendant

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An Illinois appellate court has affirmed the dismissal of an action brought by a bank against an insurer that provided directors' and officers' liability insurance to the bank's officers and directors, holding that because the underlying claim did not name any directors or officers as parties, the insurer owed no duty to defend or indemnify the bank. *Bank of Carbondale v. Kansas Bankers Surety Co.*, No. 5-00-0075, 2001 Ill. App. LEXIS 690 (Ill. App. Ct. Aug. 30, 2001).

A bank filed an action against one of its customers alleging that the customer failed to make payments due under promissory notes. The customer made a counterclaim, alleging that the bank, acting through its directors and officers, altered the notes. No directors or officers were named in the counterclaim. The bank then sought coverage for the suit under its directors' and officers' liability policy, which provided coverage for any loss which any director or officer was legally obligated to pay by reason of any wrongful act in his or her capacity as a director or officer. The policy contained a specific exclusion for any payment in connection with any claim against the bank itself. The insurer denied coverage for the bank's claim.

The court held that the policy unambiguously did not provide coverage for claims against the bank itself. In so holding, it rejected the bank's argument that the policy was ambiguous and did not require an officer or director to be named in a suit as long as the suit alleges wrongful acts on the part of a director or officer. First, the insuring clause extended coverage solely for claims against directors and officers. Second, the definition of "loss" was limited to amounts that the directors and officers were legally obligated to pay or for which the bank was required to indemnify them. Finally, the exclusion in the policy specifically applied to claims against the bank itself. Thus, the court held, the policy did not apply to the counterclaim against the bank.