

Court Applies Exclusion for Suits Seeking Solely Declaratory Relief

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The United States District Court for the Middle District of Pennsylvania has held that an exclusion in an aggregate all lines policy that barred coverage for suits seeking solely declaratory, injunctive or equitable relief barred coverage for a lawsuit filed against the insured that sought the plaintiffs' costs and attorney's fees in addition to declaratory relief. *Pennsylvania County Risk Pool v. Northland Ins.*, 2009 WL 506369 (M.D. Pa. Feb. 27, 2009).

In the underlying action, the parents and guardians of various abused and neglected children filed a lawsuit against the insureds and several state and county government entities, alleging a failure to provide state-mandated financial support to the children. The lawsuit sought declaratory and injunctive relief to redress that failure. The prayer for relief also included a request for plaintiffs' costs and attorney's fees. The insurer denied coverage, relying in part on a policy exclusion precluding coverage for "any claim or suit seeking solely declaratory, injunctive, or equitable relief."

In the resulting coverage litigation, the court first considered the threshold question of whether the policy contained a duty to defend or a duty to indemnify. The court held that the policy provided a duty to defend because, although the insuring agreement stated that the insurer would "indemnify" the insured for loss, the definition of loss included "damages, judgments, settlements, costs, charges and expenses incurred in the defense of claims" and did not include a "legally obligated to pay" limitation. The court concluded that the term "indemnify" was used "not in the strict, technical sense of reimbursing another for a loss suffered because of a third party's or one's own act or default, but rather in the broad, lay sense of making compensation to another for hurt, loss, or damage." Accordingly, the court rejected the insurer's argument that the policy only imposed a duty to indemnify.

The court then turned to the question whether the exclusion for lawsuits seeking solely declaratory, injunctive, or equitable relief barred coverage. The court concluded that it did, stating that, "[n]otwithstanding the inclusion of a prayer for costs and attorney's fees in the underlying complaint, the [underlying lawsuit] was, as a matter of law, an equitable action seeking declaratory and injunctive relief." Accordingly, the court held that the exclusion barred coverage for the underlying lawsuit.