

ALERT

No Duty to Defend in Suit Seeking Non-Monetary Relief

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The United States District Court for the Eastern District of Louisiana has held that an insurer owed no duty to defend its policyholder where the underlying complaint sought only non-monetary relief and the policy excluded coverage for claims “seeking relief . . . in any form other than money damages.” *Walpole v. Le Petit Théâtre du Vieux Carré, et al.*, 2012 WL 12839 (E.D. La. Jan. 4, 2012).

The underlying action was brought against the policyholder, a nonprofit theatre, and its officers and board members by the president of the theatre’s guild alleging that the board’s proposed sale of sixty percent of the theatre’s property to a for-profit restaurant would violate Louisiana nonprofit corporation law and the board members’ fiduciary duties. The complaint requested a temporary restraining order, preliminary and permanent injunctions, and “all other general or equitable relief” to which the plaintiff would be entitled. The policyholder sought coverage under its directors and officers liability policy, but the insurer notified the policyholder that the claims were not covered under the policy because the complaint sought only equitable relief. The policyholder filed a third-party claim against the insurer alleging that the insurer wrongfully refused to defend the action against it.

The policyholder argued that the policy’s exclusion for claims “seeking relief . . . in any form other than money damages” was ambiguous. The policy’s insuring agreement defined “loss” as “any amount . . . which [the policyholder] shall be required or permitted by law to pay for claims for wrongful acts [including but not limited to] monetary damages, judgments, and settlements.” The insuring agreement also defined “claim” to mean “any judicial proceeding . . . seeking to hold [the policyholder’s board members] responsible for a

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wrongful act.” The policyholder contended that, because the definitions of “loss” and “claim” in the general insuring agreement were broader than the exclusion and encompassed all monetary obligations arising out of all lawsuits against the policyholder, the meaning of the exclusion at issue was ambiguous and must be construed in favor of coverage. The court rejected this argument, holding that the policy must be read as a whole. The court stated that under a straightforward reading of the policy, the insuring agreement set forth the general scope of coverage, and the exclusion narrowed that coverage by, among other things, precluding coverage for claims seeking non-monetary relief.

The policyholder also argued that the insurer could not refuse to provide a defense based solely on the relief requested in the complaint. In doing so, the court noted that the policy exclusion specifically stated that it was based on the type of relief and the plaintiff’s claim was plainly limited to equitable relief. Moreover, the court noted that the underlying complaint simply could not be read to allege facts supporting an award for damages based on the causes of action relied on by the plaintiff. As a result, the court rejected the policyholder’s contention that a defense was owed.