

# Court Must Consider Extrinsic Evidence To Determine Ambiguity under California Law

January 30, 2012

The U.S. District Court for the Central District of California has denied opposing motions for judgment on the pleadings seeking declarations as to coverage for lawsuits and other matters under directors and officers insurance policies because the court determined that it would have to consider extrinsic evidence before analyzing whether the policy language at issue was unambiguous. *XL Specialty Ins. Co. v. Perry*, No. 11-cv-2078 (C.D. Cal. Jan. 26, 2012).

The coverage litigation involved eight insurers and several insured individuals and concerned the availability of coverage for numerous underlying lawsuits and other matters against former directors and officers of a failed banking institution. The insurers moved for judgment on the pleadings on the basis that the underlying matters were covered only under claims-made policies for the first of two policy years and excluded from coverage under a second policy year. Some insureds also moved for judgment on the pleadings on their claims that the insurers were required to advance defense costs under the second policy year for certain of the underlying matters.

The insureds argued that California law precluded judgment on the pleadings in favor of the insurers but not for them. They contended that they must be permitted to conduct discovery and present extrinsic evidence regarding the interpretation of the policies before the court could grant judgment on the pleadings for the insurers. The insureds further argued that the court could grant their motion regarding the advancement of defense costs without discovery because they asserted that the duty to advance defense costs was implicated if there is a potential for coverage for the underlying matters.

## Practice Areas

- D&O and Financial Institution Liability
- E&O for Lawyers, Accountants and Other Professionals
- Insurance
- Professional Liability Defense

The court denied all pending motions. The court determined that it was required to consider pertinent extrinsic evidence in determining the meaning of the policy language, “specifically whether it is ambiguous on its face.” Because the insureds had presented some evidence relating to premiums paid for the relevant policies and the underwriting history of those policies, the court stated that it could not consider such evidence in a motion for judgment on the pleadings. Because the court was required to consider pertinent extrinsic evidence before determining whether the policy language was unambiguous and because it was unable to consider such evidence at the pleadings stage of the litigation, the court denied the motions of both the insurers and insureds.