

ALERT

Third Circuit Refuses to Look Beyond Underlying Complaint to Determine If Putative Plaintiffs Are Actually Insureds

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The Third Circuit, applying Pennsylvania law, has affirmed the dismissal of a coverage suit involving rival boards of directors of an insured ecclesiastical entity, holding that the policy provided no coverage because the underlying complaint purported to be filed by the insured, even though the underlying court eventually held that in fact the underlying plaintiff was not the insured. *Holy Ghost Carpatho-Russian Greek Catholic (Orthodox) Church of the Eastern Rite of Phoenixville, PA v. Church Mut'l Ins. Co.*, 2012 WL 3065354 (3d Cir. July 30, 2012).

The insurer issued separate multi-peril policies to a church and a closely-related entity, the Brotherhood, that was created in 1938 solely to hold title to a parcel of land for the benefit of the church. In 2008, members of the church voted to sell a portion of the land. The sale could not be effected because only one original director of the Brotherhood survived and no successors had been appointed. Certain directors of the church elected themselves directors and officers of the Brotherhood and executed an agreement of sale for the land. The surviving original director in turn appointed a rival board of directors, which filed suit in the name of the Brotherhood against the new directors to overturn the sale. The state court in the underlying suit ruled that the surviving director's rival board was a "nullity" and that the new board actually constituted the present Brotherhood.

After the applicable sublimit for the policy issued to the church was exhausted by payment of defense costs, the policyholders filed suit in federal court seeking a ruling that the insurer had a duty to defend

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the lawsuit under the policy issued to the Brotherhood. The district court interpreted the brotherhood's policy to "not cover litigation costs incurred by an insured who brings a lawsuit as a plaintiff," and the policyholders did not challenge this reading. The policyholders argued instead that the federal court must accept as true their allegation in the federal complaint, and the state court's findings, that the underlying suit was not, in fact, brought by the Brotherhood. The court held that in determining the duty to defend it could look only to the underlying state court complaint, which described the plaintiffs as the insured entity, rather than to any contrary allegations in the federal complaint or findings by the state court. Accordingly, the court found that the entity's policy did not cover the underlying suit because, on its face, it was filed against the Brotherhood by "itself."

The opinion is available [here](#).