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NEWSLETTER

New York Court Rejects Application of Equitable Relief Sublimit and I v. I Exclusion

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A New York appellate court has held that a sublimit in a professional liability insurance policy for claims seeking equitable relief does not apply to counts within a lawsuit seeking legal relief. *Trustees of Princeton Univ. v. Nat'l Union Fire Ins. Co.*, 2008 WL 2277830 (N.Y. App. Div. Jun. 5, 2008). The court also held that the policy's insured v. insured exclusion does not apply to allegations against insured entities by individual insureds acting in their individual capacities and that the policy obligated the insurer to advance defense costs as they are incurred with a right to seek recoupment of non-covered costs after the suit is resolved.

The policy was issued to a university, its subsidiaries and their trustees. One of the subsidiaries was a family-endowed foundation. The family-appointed trustees of the foundation accused the university-appointed trustees of mismanaging the foundation's endowment. The family-appointed trustees and the donors' surviving children filed a suit against the university, the foundation and the university-appointed trustees of the foundation. The suit alleged legal and equitable causes of action, including several derivative causes of action brought by the plaintiffs on behalf of the foundation.

When the insurer denied coverage for the suit, the university sued the insurer, seeking reimbursement for defense costs already paid, which exceeded the policy's limit and its sublimit for claims for equitable relief. On appeal, the appellate court first held that the sublimit for claims seeking equitable relief did not extend to claims seeking legal relief. The sublimit provided that "for Claims involving multiple allegations, the . . . sublimit will only apply to the portion of the Claim which is related to the equitable or injunctive relief allegations." Without addressing the policy's definition of "Claim," the court refused to apply the sublimit "to claims arising from the same underlying occurrence that seek relief based on tort and contract law principles," stating that such a position "relies on a strained construction of the terms of the policy."

The court then held that the insured v. insured exclusion applied only to "derivative claims explicitly brought on behalf of the [foundation]," thus allowing the remaining causes of action to proceed. The insured v. insured exclusion provided that "[t]he Insurer shall not be liable to make any payment for Loss in connection with a Claim made against an Insured . . . which is brought by or on behalf of the Organization [including the foundation] against any Individual Insured; provided however, this exclusion shall not apply to any derivative Claim made on behalf of the Organization by a member or any other such representative party if such action

is brought and maintained independently of and without the solicitation of or assistance of, or active participation of or intervention of any Individual Insured or the Organization or any Affiliate thereof." Without addressing the policy's definition of "Claim," the court rejected "the contention that the policy's 'insured versus insured' exclusion applies to claims brought against the insured entities by individual insureds acting in their individual capacities."

Finally, the appellate court stated that because "the policy obligates [the insurer] to advance all defense costs as they are incurred, subject to a right of recoupment of payment for non-covered costs after the underlying litigation is completed, [the trial court] had no obligation at this juncture to rule on the allocation of defense expenses."