

# Massachusetts High Court Holds D&O Insurer Had No Duty to Defend or Indemnify Equitable Action

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The Supreme Judicial Court of Massachusetts has held that a D&O insurer had no duty to indemnify its policyholder, a condominium trust, in connection with the policyholder's payment for the defense of a land court action for equitable relief that had been brought against the trust's board of trustees because the action did not seek monetary "damages" as defined by the policy. *116 Commonwealth Condominium Trust v. Aetna Cas. & Sur. Co.*, No. SJC-08288, 2001 Mass. LEXIS 71 (Feb. 13, 2001).

The policyholder, a condominium trust, brought an action against its directors and officers liability insurer alleging that the insurer had breached its obligations under the policy by failing to reimburse the trust for legal fees and costs incurred in defending a land court action that had been brought against the trust's board of trustees. The underlying complaint, asserted by an individual unit owner, alleged that the trustees wrongfully prohibited him from obtaining access to an adjoining unit and certain common areas in order to connect a gas line to his unit. He sought relief in the form of a preliminary and permanent injunction that would allow him access to the adjoining unit and common areas.

The court held that the language of the policy was clear and that the insurer owed no duty to defend the trust or its trustees. The policy stated that the insurer "will not be called upon to assume charge of the ... defense of any claim or 'suit' ... instituted against [the trust] or any 'insured.'" The court also rejected the trust's argument that the policy's coverage for loss incurred by suits for "damages" was ambiguous and therefore should include the equity action brought by the unit owner. "Damages," according to the court, is "the word which expresses in dollars and cents the injury sustained by the plaintiff." Moreover, the policy contained an exclusion that specified that the policy did not apply to "any claim . . . for anything other than money damages," and the court therefore concluded that the trust could not reasonably expect that the policy would cover an action for injunctive relief that did not seek money damages.