

# **“Damages” Does Not Include Punitive Damages; Insurer’s Duty to Defend Ends Where Complaint Seeks Only Punitive Damages**

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The United States District Court for the Middle District of Florida, applying Florida law, has held that the definition of "damages" does not include punitive damages and, therefore, an insurer's duty to defend ended once the complaint was amended to seek only punitive damages. *Travelers Indem. Co. v. Despain*, 2006 WL 3747318 (M.D. Fla. Dec. 18, 2006).

The insurer issued a commercial umbrella policy including a Nursing Home or Home for the Aged Professional Liability Following Form Endorsement, providing excess coverage to an underlying professional liability policy. The underlying policy stated: "We will pay those sums that the insured becomes legally obligated to pay as 'damages' because of any act, error or omission in the rendering or failure to render 'professional services' by an insured or by any person for whose acts, errors or omissions an insured is legally responsible. We will have the right and duty to defend the insured against any 'suit' seeking those 'damages.'" The policy further defined "damages" to include "a compensatory amount which an insured is legally obligated to pay for any claim." Additionally, the policy excluded coverage for "civil, criminal or administrative fines or penalties levied against an insured."

The insurer had provided a defense to its policyholder in the underlying negligence action. The underlying plaintiff had sought to amend the negligence action to include a claim for punitive damages, but the court refused to grant the plaintiff leave to do so. The trial continued through a jury verdict in which the underlying plaintiff received compensatory damages of \$1,704,385. After judgment, the underlying plaintiff again sought to amend its suit to pursue punitive damages, and the trial court allowed the plaintiff to do so. The only remaining issue in the underlying action was the availability of punitive damages. The insurer filed this declaratory judgment seeking a declaration that it had no further duty to defend or indemnify the policyholder given that the sole remaining issue was a claim for punitive damages.

The court first noted that Florida public policy "generally prohibits insurance coverage for punitive damages for the direct wrongful conduct of an insured, even where the insurance policy specifically provides for such insurance." Florida law recognizes an exception to that prohibition, however, in cases such as this on, where the punitive damages are being sought based upon a vicarious liability theory.

Subsequently addressing whether the definition of "damages" in the policy covers punitive damages, the court explained that the relevant definition states that "damages" includes "any compensatory amount." Because punitive damages are not designed to compensate a plaintiff, and cannot be considered a "compensatory amount," the court held that the policy "simply did not provide coverage for punitive damages." Alternatively, the court held that the punitive damages would fall within the exclusion barring coverage for civil fines.

Having concluded that the policy did not cover punitive damages, the court next addressed whether the insurer had a duty to defend given that the only remaining claim was for punitive damages. The court ruled that because there was no longer any potential for coverage, there was no longer a duty to defend. The court specifically explained, however, that the insurer would have been obliged to defend against the punitive damages claim if it had been a part of the original complaint, which included causes of action within the policy's coverage.