

**ALERT**

# Insurer Not Liable for Amounts in Excess of Policy Limit Unless Caused by Breach of Duty to Defend

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The United States Court of Appeals for the Sixth Circuit, applying Michigan law, has held that an insurer is not liable for amounts in excess of the policy limit when the insurer breaches the duty to defend unless the insured proves that damages in excess of the policy limit were caused by the insurer's breach of the duty to defend. *Stryker Corp. v. XL Ins. America*, - F.3d -, 2012 WL 1987135 (6th Cir. June 5, 2012).

The insured, a medical products manufacturer, sold artificial knees that failed after implantation. Scores of lawsuits were filed against the insured, and the insured sought coverage from the insurer for the defense and indemnification of the suits under a duty to defend policy. The insurer denied coverage and refused to defend or indemnify the insured for the suits. The district court held that the insurer breached its duty to defend the medical products manufacturer and that the insurer's liability was not limited to its policy's aggregate limit of liability.

The Sixth Circuit held that the insurer breached its duty to defend but was not liable for amounts in excess of the policy limit unless the insured proved that those amounts were caused by the insurer's breach of the duty to defend. The court rejected its previous precedent in *Capital Reproductions, Inc. v. Hartford Insurance Co.*, 800 F.2d 617 (6th Cir. 1986), which had held that an insurer that breached the duty to defend was liable for amounts in excess of the limit of liability because those amounts were consequential damages. The Sixth Circuit held that its decision in *Capital Reproductions* had been rejected by Michigan courts and that an insured was required

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to prove causation between the breach of the duty to defend and damages in excess of the policy limit to recover extra-contractual damages.

The opinion is available [here](#).