

ALERT

Trial Court Concludes that Grand Jury Subpoenas are "Claims"

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A New York state trial court for the County of Onondaga has determined that state and federal grand jury subpoenas issued to Syracuse University and its former basketball coaches constituted "claims" under a not-for-profit individual and organizational insurance policy. *Syracuse University v. National Union Fire Insurance Co. of Pittsburgh, Pa.*, No. 2012EF63 (N.Y. Sup. Ct. Onondaga County March 7, 2013). The court also held that the insurer was required to advance defense costs on behalf of the insured in connection with the subpoenas.

State and federal grand jury subpoenas were issued to Syracuse seeking information concerning alleged misconduct by one of its assistant basketball coaches. The insurer denied coverage for the subpoenas on the basis that they did not constitute a "claim" for an "actual or alleged wrongful act of the organization." The policy defined "Claim" as "(1) A written demand for monetary, non-monetary or injunctive relief; (2) A civil, criminal, administrative, regulatory or arbitration proceeding for monetary or nonmonetary relief which is commenced by: (i) service of a complaint or similar pleading; or (ii) return of an indictment, information or similar document (in the case of criminal proceeding)."

The court first concluded that the grand jury's investigations and subpoenas constitute a "written demand . . . for non-monetary relief." The court reasoned that the meaning of "non-monetary relief" included "remedy," defined as the "means of enforcing a right or preventing or redressing a wrong." According to the court, "[a] subpoena is a grand jury's means of preventing or redressing a wrong by enforcing the public's right to 'every man's evidence.'" The court also determined that "a grand jury's investigations are criminal

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proceedings for monetary or non-monetary relief and that common sense dictates that a criminal investigation is an integral part of a criminal proceeding." The court further stated that "when a District Attorney issues and serves a subpoena in good faith, a proceeding is instituted in the grand jury, just as in an analogous situation a civil action is commenced by the service of a subpoena." The court did not address policy language defining "claim" to include a criminal proceeding commenced by "the return of an indictment, information or similar document."

The court also determined that the insured need not prove that it was a named target of an investigation because "[t]he duty to defend arises when there are any facts or allegations bringing the claim even potentially within the protection that was purchased." In addition, the court noted that the U.S. Attorney's subpoena directed to Syracuse sought information about events and transactions that occurred between employees and police and procedures and documents regarding a sexual abuse scandal at Penn State University. The court concluded that the policy's "wrongful act" requirement was met because the only reasonable interpretation of the prosecutor's questions was whether Syracuse engaged in an institutional cover-up of a scandal similar to that allegedly conducted by Penn State. Accordingly, the court determined that "the information sought meets the standard of a potential claim implicating the policy's coverage." Because the court concluded that the subpoenas potentially implicated the policy's coverage, it determined that the insurer had a duty to advance defense costs relating to the subpoenas, stating that "an insurer's duty to defend and to pay defense costs under liability insurance policies may be construed broadly in favor of the policy holder."

The opinion is available [here](#).