

ALERT

Settlement for Transfer of Rights and Provision of Services Is Not "Money Damages"

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The New Jersey Supreme Court has held that an insured's settlement agreement to waive fines, provide services for the claimant and to assign to the claimant certain rights did not constitute covered "loss," defined by the policy as "money damages." *Passaic Valley Sewerage Commissioners v. St. Paul Fire & Marine Ins. Co.*, —A.3d—, 2011 WL 2447987 (N.J. June 21, 2011).

The insured, a state regulatory body responsible for the collection and disposal of wastewater, was sued by a private wastewater hauling and treatment contractor, which challenged the violation notices the regulator had issued to it. The regulator and the contractor reached a settlement under which the regulator agreed to: (1) dismiss fines it had sought from the contractor; (2) accept, treat and dispose of sludge generated by one of the contractor's customers; and (3) assign to the contractor the right to deliver and dispose of sludge at a certain facility. The regulator's expert valued the settlement between \$5.9 million and \$17.2 million.

The regulator was insured under a Public Entity Management Liability policy, which afforded coverage for "Loss as a result of civil Claims." The policy defined "Claim" to mean a "demand for Money Damages as of right" and "Loss" to mean "Money Damages which the Insured becomes legally obligated to pay by reason of a Wrongful Act." "Money Damages" was defined as "monetary compensation for past harms or injuries." The insurer denied coverage for the settlement, asserting that it had no obligation to indemnify the regulator absent the payment of money damages. The court agreed, holding that the settlement between the regulator and claimant was not "money damages" but was instead a business arrangement involving the performance of services, designed to benefit the parties. The court

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rejected the insured's argument that, because the settlement could be valued, it constituted covered money damages. According to the court, the insurer defined "loss" narrowly to avoid the necessity of litigating the value of non-monetary losses and did not bargain for the valuation process and proofs that would be required to value the settlement here. Accordingly, the court held that the policy afforded no coverage for the non-monetary settlement.