

ALERT

No Duty to Defend Suit Demanding Only Injunctive Relief

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A California Court of Appeal has held that an insurer's duty to defend an insured was not triggered by a claim seeking injunctive relief until the claimant sought covered damages. *San Miguel Comm. Ass'n v. State Farm Gen. Ins. Co.*, 2013 WL 5658825 (Cal. Ct. App. Oct. 1, 2013). In addition, the court held that the insurer did not commit bad faith because it did not misrepresent its communications with claimant's counsel.

The insureds, a residential community association and its officers, were embroiled in a dispute with some community residents over enforcement of parking regulations. The residents requested non-binding mediation but did not identify any damages or demand compensation in the mediation request. The association tendered the request to its insurer. The policy required the insurer to "defend any claim or suit seeking damages covered under this policy." Based on its review of the mediation request and statements by the claimants' attorney that the claimants had not suffered any injury or out-of-pocket expenses, the insurer concluded that no coverage was available because the claimants sought only enforcement of community parking regulations and not compensatory damages.

After the coverage denial, the claimant filed a complaint and first amended complaint against the insureds seeking only injunctive relief and punitive damages. The insurer denied coverage for the first amended complaint because the claimant sought only injunctive relief and punitive damages—neither of which, it contended, constituted damages under the policy.

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The claimants then filed a second amended complaint, which sought compensatory damages. The insurer ultimately accepted coverage but refused to pay defense costs incurred before the tender of the second amended complaint. The insureds then filed suit against the insurer for failing to pay all defense costs and for allegedly making misrepresentations concerning the statements by claimants' attorney.

The court held that the insurer had no duty to defend the insureds until the second amended complaint was tendered because the mediation request and previous complaints did not seek compensatory damages—only injunctive relief and non-covered punitive damages. The insureds contended that the mediation request, original complaint, and first amended complaint implied that claimants sought monetary damages. The court rejected this contention, opining that neither the claimants' allegation there was no adequate remedy at law nor claimants' counsel's initial statement that his clients were not seeking compensatory damages would support an inference that damages would be sought. Moreover, the court opined that claimants' request for punitive damages, even though it would have required the award of compensatory damages, did not imply a request for compensatory damages given the non-existence of any allegation of compensatory damages.

The court also held that the insurer had not committed bad faith by "making up the phone call" with claimants' counsel, in which he stated that his clients had sustained no damages. The court held that the evidence supported the insurer's contention that claimants' counsel had represented to the claims handler that his clients were not attempting to recover for any minimal damages they may have suffered. Moreover, the insurer could not have acted in bad faith in its handling of the claim before the tender of the second amended complaint because there was no coverage under the policy until the second amended complaint was tendered.

The opinion is available [here](#).