

ALERT

Statutory Damages Assessed Against Preferred Provider Organization Under Louisiana PPO Act Do Not Constitute Fines or Penalties

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A Louisiana appellate court has held that statutory damages awarded under the Louisiana Preferred Provider Organization Act do not constitute a fine or penalty and were covered under E&O policies. *Williams v. SIF Consultants of Louisiana, Inc.*, 2014 WL 718060 (La. App. 3d. Feb. 26, 2014).

The insurers issued E&O policies over several policy periods to the insured, a preferred provider organization. The claimant medical providers filed a class action lawsuit against both the insured and the insurers under Louisiana's direct action statute, alleging that the insured failed to comply with the mandatory notice provisions of billing discounts in the Louisiana Preferred Provider Organization (PPO) Act. In the event of noncompliance, the Louisiana PPO Act provides for "damages payable to the medical provider of double the fair market value of the medical services provided, but in no event less than the greater of fifty dollars per day of noncompliance or two thousand dollars, together with attorney fees." The insurers contended that no coverage existed under the policies in part because the statutory damages constituted a fine or penalty, and the policies carved out of the definition of covered "Loss" "fines, penalties, taxes, and punitive, exemplary or multiplied damages."

The Louisiana appellate court concluded that the damages assessed under the Louisiana PPO Act were properly subject to coverage under the policies. The appellate court noted that, although the policies carved out coverage for penalties and fines, "[i]t is equally clear that

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the policy does not exclude statutory damages.” According to the court, the amounts assessed pursuant to the Louisiana PPO Act are not properly considered penalties because the statute “denotes that a violator is subject to pay ‘damages’ and includes no language regarding penalties.” As such, the appellate court rejected the insurers’ argument that no coverage existed for the amounts awarded. The appellate court also rejected the insurers’ contention that no claim was made during the requisite policy period, concluding that a demand letter sent to the insured from the state of Louisiana during the policy period constituted a claim as defined by the policies.