

# BINDING AUTHORITY

Insurance Coverage Decisions: Issued Today - Impact Tomorrow



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## **Pennsylvania Federal Court: Relief for Insurers Facing “Additional Relief” Claims**

### **The Amorphous Wherefore Clause -- The Pebble-In-Your-Shoe of Coverage Issues**

We've all faced this situation – You are reviewing a complaint to determine if a defense is owed. The complaint seeks a variety of injunctive and/or declaratory relief. The plaintiff's objective is unquestionably to compel the defendant to take or refrain from taking some action or is seeking a judicial determination of the parties' rights. There is no doubt in your mind that the underlying plaintiff is not seeking monetary damages. Therefore, whether the policy at issue is CGL or Professional Liability, no defense will be owed because the insuring agreement's "damages" requirement is not satisfied.

But then, just as your seemingly straightforward coverage determination is about to be made, and as you are thanking the coverage gods for, at last, handing you an easy one after a rough week, you reach the last page of the complaint. And there it is, buried in the Wherefore Clause, a couple of prayers for relief that cause you to groan and now make you pause and wonder if, just maybe, the complaint does seek damages after all.

It turns out that the plaintiff's Wherefore clause also seeks such additional relief that the court deems just and attorney's fees. Could this include money damages? After all "such additional relief that the court deems just" is awfully broad and could include anything – including money. And attorney's fees are certainly money. But, you know deep down, based on all of the talk in the complaint about injunctive and declaratory relief, that the plaintiff isn't really seeking money damages. If it were, it would have surely said so somewhere in the first 14 pages of the complaint. And, besides, there isn't even a right to recover attorney's fees for these causes of action.

You know that those lines in the Wherefore clause are throw-aways, boilerplate, only there because they were cut and pasted from the last complaint. But you also know that the duty to defend is broad and the four corners are king. What to do? What to do? What to do with this pebble-in-your-shoe of a coverage issue?

My answer when I get this question -- and I seem to get it a lot -- is that those additional prayers for relief do not constitute a demand for damages. I refer to such prayers for relief as the Amorphous Wherefore Clause. There is not an abundance of case law addressing this issue, but the majority that does exist supports the conclusion that these generic prayers for relief do not constitute damages.

Last week a Pennsylvania federal court reached this conclusion. What is particularly noteworthy about *Pennsylvania County Risk Pool v. Northland Insurance* is that the Middle District of Pennsylvania provided a somewhat lengthy analysis of the issue – at least more than many courts do.

At issue in *Pennsylvania County Risk Pool* was coverage for a putative class action filed against certain Pennsylvania counties seeking injunctive and declaratory relief associated with various state and county agencies and officials that had allegedly failed to provide mandated financial support, in the form of per diem foster care payments, to abused and neglected children in the care of “kinship care givers.”

The court held that Northland Insurance had no duty to defend the insureds in connection with the litigation because the plaintiffs sought only declaratory or injunctive relief, which falls outside the scope of the policy’s coverage.

In reaching this conclusion, the court was required to address the insureds’ argument that the complaint sought money damages based on the following prayers for relief: “h. That this Court award plaintiffs’ costs and reasonable attorney’s fees; and i. That this Court award such additional or alternative relief which this Court deems just, proper, or equitable.” The *Pennsylvania County Risk Pool* Court rejected this argument.

On the subject of “additional or alternative relief,” the court held as follows:

As to Plaintiffs’ assertion that the closing prayer for “additional or alternative relief” somehow loosed the Anderson Lawsuit from its equitable underpinnings and brought it within the scope of coverage, such language is boilerplate and does nothing to alter the basic nature of the underlying complaint. . . . It is not a claim for damages, but an inchoate demand, the purposes of which are, first, to allow revision of a prayer for relief in light of facts later adduced and, second, to permit a court to fashion some form of relief, initially unspecified, in the course of an action.

*Pennsylvania County Risk Pool* at 16-17 (citations omitted).

On the subject of “costs and reasonable attorney’s fees,” the court held as follows:

An award of costs and fees is not a damage award. Instead, it simply repays the labor involved in striving to obtain a damage award. Unlike a damage award, an award of costs and fees in no way rectifies the grievance initially giving rise to a case; it does not . . . 'substitute for a suffered loss.' Rather than being compensation, costs and fees arise solely as incidents of the effort to achieve compensation.

*Pennsylvania County Risk Pool* at 19 (citations omitted).

Based on *Pennsylvania County Risk Pool*, my answer to the question whether the Amorphous Wherefore Clause is sufficient to constitute a demand for damages will continue to be no – in the absence of state specific law to the contrary.

Attached is a copy of the Middle District of Pennsylvania's February 27 decision in *Pennsylvania County Risk Pool v. Northland Insurance Co.*

Please let me know if you have any questions.

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