

Insurer Can't Dismiss Church's Claim for Declaratory Relief

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A federal court recently denied an insurer's motion to dismiss an insured's claim for declaratory relief. The insurer argued that the policyholder's declaratory judgment claim was redundant of its breach of contract claim. The Court ruled that "redundancy is not grounds for dismissal under Rule 12(b)(6)."

In [The United Church of Marco Island, Inc. v. Lexington Insurance Company](#), the policyholder, The United Church of Marco Island, Inc., fell victim to a \$1.2 million fraud after a series of emails impersonating church officials and a Registered Financial Advisor who had a relationship with the Church resulted in the Church sending funds to an "illicit bank account." The Church was able to recover \$600,000 and sought coverage under its Commercial Crime Policy issued by Lexington Insurance Company for the remaining \$600,000.

Lexington denied coverage arguing that the policy's impersonation fraud endorsement did not provide coverage because the Registered Financial Advisor impersonated in the fraudulent emails was not a "Vendor." The policy defined "Vendor" as "any entity or natural person that has provided goods or services to [the Church] under a legitimate pre-existing arrangement or written agreement" and excluded any "financial institution, asset manager ... or any similar entity."

The Church filed a complaint against Lexington asserting a claim for declaratory relief under 28 U.S.C. § 2201 and a claim for breach of contract. In the claim for declaratory relief, the Church sought a declaration that the exclusory language in the definition of "Vendor" did not preclude coverage for its claim. The claim for breach of contract alleged that Lexington breached the policy by failing to pay the full value of the claim.

Lexington moved to dismiss the Church's claim for declaratory relief on the grounds that it was redundant of the breach of contract claim. The Court denied Lexington's motion, allowing both of the Church's claims to proceed. In reaching its decision, the Court acknowledged that some courts dismiss claims for declaratory relief where there is a parallel breach of contract claim, but held that it is in the court's discretion to do so. The court also stressed that "a motion to dismiss tests a claim's plausibility – not redundancy."

The United Church of Marco Island v. Lexington serves as a reminder that, when filing suit to seek

coverage, insureds should work with competent counsel to ensure that all viable claims are being pursued, even if some claims may seem duplicative of others. Potentially “duplicative” claims may survive a motion to dismiss and can potentially be beneficial to the policyholder as the case develops.

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National Law Review, Volumess XIII, Number 235

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