

Court Applies “Deliberate Acts” and “Law Enforcement” Exclusions in Municipal Policy

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A federal district court in Pennsylvania, applying Pennsylvania law, has held that an insurer was not obligated to defend or indemnify a city and city officials who were sued for civil rights violations in connection with a racially motivated murder that went unsolved for more than thirty years because the allegations fell within the "deliberate acts" and "law enforcement" exclusions in the city's public officials and employment practices liability policy. *Clarendon Nat'l Ins. Co. v. City of York, PA*, 2003 WL 22519921 (M.D. Pa. Nov. 6, 2003).

The city of York, Pennsylvania purchased a public officials and employment practices liability policy. The policy excluded claims "[a]rising out of the deliberate violation of any federal, state, or local statute, ordinance, rule, or regulation committed by or with the knowledge and consent of the insured[.]" Additionally, the policy specified that no "law enforcement department or agency" was insured and specifically excluded claims "[a]rising out of operational law enforcement functions and activities...."

The underlying litigation against the city of York was the result of an investigation into the shooting death of an African-American citizen of York during racial violence in July of 1969. Ultimately, two former York police officers were found guilty of the thirty-year old murder and the surviving family members of the victim filed the underlying civil suit alleging numerous civil rights violations against the city and individual former police officers. After the civil rights action was filed, the city of York tendered defense of the action to the insurer under the public official and employment practices liability policy. The insurer denied coverage and filed a declaratory judgment action.

The district court held, based on a comparison between the allegations in the underlying complaint and the terms of the policy, that no coverage was available. The court reasoned that four of the counts in the underlying complaint alleged knowing and intentional violations of the plaintiffs' civil rights and that they therefore fell squarely within the "deliberate acts" exclusion. The court further determined that "[a]ll of the[] actions or inactions at the center of the...case relate to the police officers' duties as police officers" and that the "law enforcement" exclusion therefore barred coverage under the policy. Additionally, the court held that because the clear terms of the policy barred any possibility of coverage for the city's claim, the insurer had no obligation to defend the city in the underlying litigation.

For more information, please contact us at 202.719.7130.