

Section 1983 Claim Sounds in Tort and Is Not Excluded under Breach of Contract or Debt Financing Exclusions

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A federal district court, applying Pennsylvania law, has held that a claim against a county for civil rights violations under 42 U.S.C. § 1983 is not within the scope of policy exclusions that apply to breach of contract or debt financing claims. *Cont'l Cas. Co. v. County of Chester*, 2003 WL 359526 (E.D. Pa. Feb. 19, 2003).

The insurer issued a public officials liability policy to the county, which provided that the insurer "will pay those sums that the insured becomes legally obligated to pay as compensatory civil damages arising out of a 'wrongful act' to which insurance applies." The policy contained a breach of contract exclusion, which barred coverage for "[a]ny 'claim' arising out of a breach of contract, or out of liability assumed by an insured under any contract or agreement." The policy also excluded coverage for "[a]ny debt financing, including but not limited to bonds, notes, debentures and guarantees of debt."

The insured county sued a physician for breach of contract for failing to develop a public health care facility with funds provided by the county. The physician filed a counterclaim against the county, asserting a variety of breach of contract claims as well as a claim for violation of 42 U.S.C. § 1983 because the county allegedly deprived the physician of a real property interest, deprived him of the use of equity in the property and harmed his credit rating. The insurer disclaimed coverage for the entire counterclaim based on the breach of contract and debt financing exclusions. Coverage litigation ensued.

The court held that the counterclaim based on Section 1983 was a tort claim and thus not excluded by the breach of contract exclusion. The court reasoned that "[f]or coverage purposes, before a claim can be construed as a tort action, the wrong ascribed to the defendant must be the gist of the action with the contract being collateral." (quoting *Phico Ins. Co. v. Presbyterian Med. Servs. Corp.*, 663 A.2d 753, 757 (Pa. Super. Ct. 1997)). The court explained that the "gist" of the Section 1983 counterclaim was tort because it alleged substantive due process claims that purportedly resulted in a deprivation of property rights. The court also noted that in *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 709 (1999), the Supreme Court had stated that "there can be no doubt that claims brought pursuant to § 1983 sound in tort." Finally, the court explained that tort actions "lie from the breach of duties imposed as a matter of social policy while [contract actions] lie for the breach of duties imposed by mutual consensus," and the duties imposed on

public officials not to abuse their positions were socially imposed and thus sounded in tort.

The court also rejected the insurer's claim that the debt financing exclusion barred coverage because the county had provided financing to the physician. The court reasoned that the debt financing exclusion referred "to the insured's obligations and not the obligations of third parties." Since the county was not the borrower, the court concluded the exclusion was inapplicable.

For more information, please contact one of WRF's Professional Liability Attorneys at 202.719.7130