

Insurer Must Indemnify Policyholder for Settlement of Intentional Interference With Business Expectancy Claim

February 2007

The United States District Court for the Eastern District of Washington has held that an excess liability policy provided coverage for a settlement of an intentional interference with business expectancy claim against the insured municipality. *In re Feature Realty Lit.*, 2006 WL 3692649 (E.D. Wash. Dec. 13, 2006). The court also held that an exclusion for claims arising from a willful violation of statutes or regulations did not apply.

The insurer issued an excess liability policy with a policy period of 1999 to 2002 to a municipality. In 1995, a developer sued the municipality for allegedly wrongfully withholding a permit needed to proceed with a development project. The 1995 action was settled in 1998, but the insured reneged on the settlement by failing to approve a permit in May 1999 before the inception of the policy. Continued permit disputes between the policyholder and the developer resulted in the developer filing two other actions in 2000 and 2003. Ultimately, the actions were consolidated in one suit alleging violation of 42 U.S.C. § 1983, a Washington statute, and the tort of intentional interference with business expectancy. The interference claim was settled in 2005, and the policyholder municipality sought coverage for the settlement amount.

The insurer moved for summary judgment, arguing that no wrongful act occurred during the policy period as required by the policy. In rejecting that motion for summary judgment, the court held that the "evidence establishes the basis of [the underlying plaintiffs'] interference claim at the time of the 2005 settlement was not merely the [policyholder's] refusal to act in May 1999." The court concluded instead that "the settlement was premised upon the [policyholder's] alleged acts related to delays in the processing of [a] plat amendment beginning in May 1999 and continuing until December 2002." The court noted that the policy language treated these actions as a single wrongful act but that the language did not address the timing of the wrongful act. In this regard, the court held that "though related or continuous acts are collapsed into a single 'wrongful act' for purposes of the policy limits, nothing in the policy requires the act to be deemed committed at a single fixed point in time." The court reasoned that where "there are repeated and related acts of delay occurring over a period of time, during which the damage incurred from the delay is indivisible and continuous, it is reasonable to deem the act to have been committed continuously for the purpose of determining what insurance policy has been triggered." Accordingly, the court held that the municipality was entitled to coverage because the underlying plaintiff "has demonstrated that the 2005 settlement... was based

upon 'wrongful acts'... committed over a span of several years and occurring well after the commencement of coverage."

The court also rejected the insurer's argument that an exclusion for claims "arising from the willful violation of any statute" barred coverage for the intentional interference claim. The court acknowledged that it had previously determined that this exclusion precluded coverage for the count in the underlying action alleging a statutory violation. However, it held that the "interference claim was not merely an alternative cause of action or an afterthought, but a distinct claim based upon similar facts" that were independent from the statutory violation. Accordingly, the court concluded that the exclusion did not apply.