

# First Circuit Rules Insurer Estopped from Seeking Recoupment of Settlement Payment

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The United States Court of Appeals for the First Circuit, applying Maine law, ruled that an insurer was estopped from seeking recoupment, based on the policy's deductible provision, of its contribution to a global settlement of a lawsuit against its insured. *Am. Nat'l Fire Ins. Co. v. York County*, WL 2385464 (1st Cir. Aug. 5, 2009).

The policyholder was sued in a class action lawsuit by individuals who had been strip-searched at the insured's jail following misdemeanor arrests. The policyholder sought coverage under a law enforcement liability insurance policy issued by the insurer and under other policies that provided coverage for the relevant time period. The policy contained a \$5,000 per claim deductible and an aggregate per-occurrence limit of \$1 million. The insurer agreed to pay 25% of defense costs incurred in connection with the class action and, in its reservation of rights letter, asserted that the \$5,000 deductible would apply to each claim brought for illegal strip search.

Over the course of two mediation sessions, the insurer twice reasserted its position that coverage under the policy was subject to a \$5,000 per claim deductible and that it would be liable only for loss in excess of \$5,000 on each claim. The insured responded that the \$5,000 deductible applied to the entire class and not to individual class members. The insured also took the position that, regardless of how the deductible operated, a verdict would likely exhaust the entire \$1 million in coverage available under the policy. Shortly after the second mediation, the insurer authorized a settlement contribution of \$750,000, and the insured entered into a \$3.3 million global settlement. The settlement included a \$50,000 contribution by the insured and was conditioned on the insured's affidavit or testimony regarding the relative lack of assets available to fund a settlement that exceeded \$3.3 million.

Following the settlement, the insurer filed the instant action to recover its settlement contribution on the basis that each individual claim compromised by the settlement was settled for less than the \$5,000 deductible amount. The lower court accepted the insurer's position that the policy's "per claim" deductible language meant "per claimant" and not "per deductible." However, the court ruled after a bench trial that the insurer was equitably estopped from pursuing its claim for reimbursement.

On appeal, the court affirmed the lower court's ruling that the insurer was equitably estopped from seeking recoupment of its settlement payment. Under Maine law, an insured seeking to establish equitable estoppel must show (1) unreasonable conduct by the insurer that misleads the insured regarding the scope of coverage, and (2) justifiable and detrimental reliance by the insured on that conduct. The court found that, despite its reservation of rights, the insurer unreasonably failed to indicate its intent to recoup the deductibles when it agreed to the settlement contribution. In this regard, the court noted that, at the time of the settlement, the insurer did not restate its position regarding the deductibles, seek an agreement as to how its settlement contribution would be allocated or impose any conditions on its payment. The court concluded that the insured reasonably understood the insurer's silence as an abandonment of its position regarding the deductibles.

The court further determined that the insured, in light of its weak financial condition, would not have agreed to the global settlement had it known that the insurer intended to seek to recoup its \$750,000 contribution. The court concluded that the insured reasonably believed it was resolving its entire exposure by contributing \$50,000 to the global settlement and would suffer a detriment if it were required to pay more.