

Contract Exclusion Bars Coverage for Tortious Interference and Inducement Claims

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The United States District Court for the District of Massachusetts, applying Massachusetts law, has held that an insurer does not have a duty to defend claims for tortious interference with contractual relations and inducement of breach of contract pursuant to an exclusion for any claim "based upon, arising from, or in any way related to any liability under any contract or agreement." *Radianse, Inc. v. Twin City Fire Ins. Co.*, 2010 WL 3928620 (D. Mass. Oct. 6, 2010). In so holding, the court rejected arguments that the exclusion did not apply because the insured's liability arose solely out of tort law and that the liability could have occurred absent the contract.

The insured was a co-defendant in a suit by a competitor that alleged "tortious interference with contractual relations and inducement of breach of contract" as well as violations of the Massachusetts Regulation of Business Practices Statute, Mass. Gen. Laws Ch. 93A. The complaint requested an injunction against the insured to prevent use of the competitor's property and trade secret information. The causes of action purportedly all arose from the insured's involvement with a former employee of the competitor and were based on the employment contract between the former employee and the competitor, which contained a non-compete clause.

The insurer issued a policy providing the insured with directors and officers liability and employment practices insurance coverage. The insurer denied coverage based on the breach of contract exclusion, which excluded coverage for any claim "based upon, arising from, or in any way related to any liability under any contract or agreement, provided that this exclusion shall not apply to the extent that liability would have been incurred in the absence of such contract or agreement." The insured subsequently sued for defense and indemnification.

Ruling on the parties' cross-motions for summary judgment, the court held that the broad language of the breach of contract exclusion precluded coverage for the insured's claim. The court rejected the insured's argument that the exclusion was inapplicable because the claims arise out of tort, rather than contract law, and that the insured was not a contracting party. The court stated that, because the exclusion applied to "claims *in any way* related to *any* liability under *any* contract or agreement," it was "of no consequence" that the insured was not a party to the contract. The court further held that the tort claims were clearly related to a contract and thus were excluded from coverage.

The court also rejected the insured's argument that the exception "to the extent that liability would have been incurred in the absence of such contract or agreement" precluded application of the exclusion. It reasoned that, without the contract, there was no possibility that a claim for interference with contractual relations could be sustained and thus that the exclusion barred coverage.

The policyholder also argued that the Massachusetts Regulation of Business Practices Statute, Mass. Gen. Laws Ch. 93A, expanded the scope of liability beyond the claims for contractual interference. In rejecting this argument, the court held that, although the underlying complaint did seek injunctive relief regarding the insured's use of competitor's property and proprietary trade secret information, no count actually alleged that the insured "misappropriated any proprietary information." The request for equitable relief was deemed "purely precautionary," and the court found that there were "no facts pled alleging or even hinting that [the insured] had misappropriated any proprietary information."