

No Coverage for Suit Filed after Claims-Made Policy Expired

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In an unpublished opinion, the Eastern District of Louisiana has held that an insurer that issued a claims-made public officials and employees liability policy to a city did not have an obligation to provide coverage for a lawsuit filed three years after the policy expired. *Global ADR, Inc. v. City of Hammond*, 2004 WL 1562840 (E.D. La. July 12, 2004). The court rejected the city's argument that the lawsuit related back to a prior lawsuit filed during the policy period, reasoning that the prior lawsuit was for injunctive relief only and therefore did not constitute a claim under the policy.

The insurer issued a claims-made policy to the city for the period from July 1, 1999 to July 1, 2000. The policy provided that "all Claims against any insureds arising out of the same Wrongful Act, or logically or causally connected Wrongful Act, will be considered one Claim. All such Claims will be considered first made at the time the earliest such Claim was made against any insured." The policy defined "claim" as a "demand for money as of right." The policy also stated that if the insured provided written notice of Wrongful Acts "which might reasonably be expected to give rise to a Claim...then any Claim subsequently made against the Insured by reason of the Wrongful Act shall be deemed to have been first made during the Policy Period."

The plaintiffs sought to purchase a piece of real property with the intent to use it for commercial purposes. However, because the property was in an area that was zoned as "residential," they requested a "conditional use" exception from the city. The city council passed an ordinance granting the conditional use. The plaintiffs then closed on the property. During the policy period, a group of neighbors challenged the ordinance in state court and the ordinance was stricken on the basis that the city council failed to advertise amendments to the ordinance prior to its passage. The complaint sought only injunctive relief. Three years later, after the policy had expired, the underlying plaintiffs brought suit against the city, its insurer and individual city officials, asserting Fifth Amendment, tort and substantive due process claims pursuant to 42 U.S.C. § 1983. The insurer sought dismissal from the case, arguing that the policy did not provide coverage for the lawsuit since it was filed after the policy had expired.

The plaintiff argued that the initial litigation challenging the ordinance, which was commenced on December 6, 1999, was a claim made during the policy period, and that the present claim should be deemed to have also been made during the policy period because it arose out of the same Wrongful Act. The court rejected that argument, explaining that the earlier litigation was not a "claim" under the policy since it sought injunctive

relief, not money damages. The court also found that a letter dated December 13, 1999, seeking coverage for the prior litigation did not serve as notice of a potential claim under the policy because it simply informed the insurer of the suit for injunctive relief, and "it cannot be said that [the insurer] knew or should have known of any further litigation or potential claim."

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