

Coverage under Public Officials Policy Barred Based on Prior Knowledge Exclusion

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The federal district court for the Northern District of Ohio has granted summary judgment to an insurer, determining that coverage for a "public officials wrongful act" was barred by an exclusion applying to claims for such acts if the insured had knowledge of facts that could give rise to such a claim prior to the policy period. *XXL of Ohio, Inc. v. City of Broadview Heights*, 2004 WL 2475482 (N.D. Ohio Oct. 20, 2004).

The insurer issued a Public Entity/Public Officials Limited Liability Policy to the city of Broadview Heights. It provided coverage for "public officials wrongful act(s)" with respect to "claims" made during the one-year policy period. The policy excluded coverage for any "public officials wrongful act" that takes place prior to the policy period "if the insured had knowledge of circumstances which could reasonably be expected to give rise to a 'claim'" under the policy.

The underlying litigation was based on the city's denial of a hotel owner's request for a variance from the city's sign ordinance one month prior to the policy's inception. After the policy's inception, the owner filed suit against the city, challenging the ordinance's constitutionality. The city tendered the claim to its insurer, which denied coverage on a number of grounds. The city then filed a third party claim against the insurer in the underlying suit, alleging breach of contract, and both the city and the insurer filed motions for summary judgment.

In granting the insurer's motion, the court noted that, prior to the policy period, the insured knew that: (1) the variance had been denied, (2) the hotel owner contended that the denial prevented him from doing business and violated due process and (3) the hotel owner had retained counsel familiar with constitutional law who had asserted that the signs at issue were constitutionally protected from the sign ordinance. Further, the court noted that the insured had begun fining the hotel owner for the signs at issue prior to the policy period. Accordingly, the court concluded that the city reasonably should have been aware of a potential claim, and thus, that the exclusion applied to bar coverage under the policy.

For more information, please contact us at 202.719.7130.