

Prior Knowledge, Intentional Torts Exclusions Inapplicable

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A Pennsylvania federal court, applying Pennsylvania law, has held that a prior knowledge exclusion does not bar coverage for negligence claims made against a county based on actions of law enforcement officers regarding a laboratory report and false testimony. *Coregis Ins. Co. v. City of Harrisburg*, 2005 WL 2179734 (M. D. Pa. Sept. 9, 2005). The court also held that exclusions for intentional torts did not bar coverage for the negligence claims against the county, even if the alleged negligence was based on the intentional torts of law enforcement officers.

The policyholder, a Pennsylvania county, had a public officials liability insurance policy. On its application, the policyholder stated that there were no claims against its officials or employees and that it was not aware of "any fact, circumstance, or situation that might reasonably be expected to give rise to a claim against them" or the county. The policy also contained an exclusion for "any Claims or Loss arising out of any matter that was listed, or should have been listed, in the application(s) attached to this Policy." The policy likewise excluded coverage for certain intentional torts, including "any Claim or Loss Arising Out of any criminal, dishonest, malicious, fraudulent or knowingly wrongful act or omission, . . . any Claim or Loss Arising Out of death, bodily injury, sickness, disease, disability, shock, humiliation, embarrassment, mental injury, mental anguish, emotional distress, or injury to personal or business reputation or character [and] any Claim or Loss Arising Out of assault, battery, false arrest, detention, imprisonment, malicious prosecution or abuse of process."

After the policy was issued, a former prisoner filed suit against the county, the city and individuals for civil rights violations, fraud, false imprisonment, conspiracy and intentional infliction of emotional distress arising out of his murder conviction. The counts against the county alleged a failure to train and adequately supervise employees. These counts were based on allegations that the underlying plaintiff was wrongly convicted based on a false laboratory report, false testimony by law enforcement officials and suppression of evidence. The policyholder notified the insurer of the claim, which defended under a reservation of rights. The insurer then filed the current declaratory judgment action, seeking a declaration of non-coverage based on, *inter alia*, the prior knowledge exclusion and the exclusions for intentional torts.

On the insurer's motion for summary judgment, the court found that the allegations against the county were "a step removed" from the allegations regarding the laboratory evidence and false testimony against the law enforcement agents, and therefore, the county had no prior knowledge of a claim. The court noted that although the issue was undecided by Pennsylvania state courts, the United States Court of Appeals for the Third Circuit has applied a "subjective and objective analysis to determine whether an insured's claims for coverage are excluded on the basis of prior knowledge." The insurer argued that the policyholder was aware of a potential suit but failed to disclose this fact on the insurance application. Specifically, the insurer argued that before the policy was issued, the prisoner's petition for post-conviction relief had outlined the conduct that led to the underlying suit. Additionally, the district attorney had released the prisoner from prison, there was testimony regarding problems with the laboratory report and there were several media reports of the controversy before the policy inception. The court rejected the insurer's argument, finding that "certain [county] officials were aware of [the underlying plaintiff's] claims of police misconduct and evidence tampering would not necessarily cause a reasonable attorney to believe that the county faced a potential claim for negligence arising out of such allegations."

The court also concluded that the exclusions for intentional torts did not bar coverage. The insurer argued that these exclusions barred coverage for the negligence claims against the county because the claims were proximately caused by the intentional torts of a law enforcement officer. The court rejected the argument, relying instead on the reasoning in *Board of Public Education v. National Fire Insurance Co. of Pittsburgh*, 709 A.2d 910 (Pa. Super. Ct. 1998), that "the alleged criminal activity of a third party should not be allowed to control whether the insured was entitled to a defense against covered claims against itself." The court found that the policy did not exclude coverage for negligence claims "even where it is claimed that the county's negligence led to certain intentional torts that would otherwise be excluded." As such, the court rejected the insurer's argument that the exclusions applied "regardless of the cause of action or theory alleged." The court also determined that the underlying complaint alleged a "systematic failure" to investigate and prosecute, which led to the falsification of evidence. The court characterized this allegation as one of "fundamental negligence of the municipalities themselves."

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