

ALERT

Reinsurer Not Obligated to Provide Coverage for Contract Action Even Though Insurer Funded the Defense

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Applying Florida law, a federal court ruled that a reinsurer properly denied coverage for an underlying lawsuit that sought relief based solely on the insured's failure to pay under a construction contract because there was no alleged "wrongful act" and the policy contained an exclusion for intentional breaches of contract. *Public Risk Management of Florida v. One Beacon Insurance Co.*, 2013 WL 5705575 (M.D. Fla. Oct. 18, 2013). The court also concluded that the interaction between the insurers did not create coverage through estoppel.

According to the underlying complaint, the dispute involved a construction contract between the insured city and the claimant. During the relevant timeframe, the insurer issued a public officials' E&O policy to the city. The policy provided coverage for liability arising from "wrongful acts," which was defined as "any actual or alleged error or miss-statement [*sic*], omission, act or neglect or breach of duty due to misfeasance, malfeasance, and nonfeasance." The policy also excluded coverage for intentional breaches of contract. The insurer funded the defense of the underlying litigation and sought reinsurance from its carrier. The reinsurer, however, refused to provide coverage under its policy because it argued that the litigation was not covered under the insurer's policy in the first instance. The insurer then sued its reinsurer.

In granting the reinsurer's motion to dismiss, the court examined the underlying complaint and noted that the claimant relied on the construction contract as its basis for its claim against the insured city. According to the court, the claimant did not rely on any alleged

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negligent acts by the insured. Thus, the court determined that there was no coverage under the policy because there was no allegation of any purported “wrongful act” by the insured. The court noted that, even if there were allegations of a “wrongful act,” the contract exclusion would bar such coverage.

The court also rejected the insurer’s argument that a reservation of rights letter from the reinsurer that the insured claimed conceded coverage. According to the court, the reservation of rights letter reiterated the reinsurer’s position that there was no coverage and provided only that the reinsurer would further investigate coverage under a reservation of rights.