

Illegal Acts by City and Police Fall within Deliberate Acts and Law Enforcement Exclusions of Policy

March 2005

In an unreported decision, the United States Court of Appeals for the Third Circuit, applying Pennsylvania law, has held that an insurer properly denied coverage under the deliberate acts and law enforcement exclusions of a public officials liability coverage policy for a civil rights lawsuit based on a police killing. *Clarendon Nat'l Ins. Co. v. City of York*, 2005 WL 290003 (3d Cir. Feb. 8, 2005).

The policyholder, a city and its police department, had allegedly followed a practice of discrimination against African-Americans that resulted in the murder of an African-American woman. Ultimately, two police officers were convicted of second-degree murder and seven pleaded guilty to lesser charges. The woman's estate sued the city for negligence and civil rights violations.

The insurer sought a declaration that it had no duty to defend the city in this action under a public officials and employment practices liability policy because the claims were excluded by the deliberate acts and law enforcement exclusions in the policy. The first exclusion precluded coverage for any claim "[a]rising out of the deliberate violation of any federal, state, or local statute, ordinance, rule or regulation committed by or with the knowledge and consent of the insured." The law enforcement exclusion barred coverage for "any 'claim' made against the insured . . . [a]rising out of operational law enforcement functions and activities."

The appellate court held that the deliberate acts exclusion applied to the civil rights counts because the underlying complaint alleged that the city and its officers "knowingly and intentionally" violated or conspired to violate the plaintiffs' constitutional rights." The court held that the law enforcement exclusion applied to the state law negligence counts in the complaint because "each of the defendants was 'employed as a police officer . . . and was acting in furtherance of his official duties as a police officer' during the events surrounding the 1969 shooting." The court rejected the argument that the exclusion should not apply because the police officers were acting "contrary to the established policy, practice and custom" and therefore could not have been acting in accordance with their "law enforcement function." The court explained that the city's reading of the language "would prove too much because in almost any case where a tort suit arises from law enforcement action it can be said that the police are alleged not to have been acting in conformity with their proper law enforcement function."

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