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EMINENT DOMAIN - TEXAS

City of College Station, Tex. v. Star Ins. Co.

United States Court of Appeals, Fifth Circuit - November 14, 2013 - F.3d - 2013 WL 6028315

City brought action against its general commercial liability insurer, seeking to recover defense costs, indemnification, and statutory penalty interest, after insurer refused to defend or indemnify the city in an underlying lawsuit.

In the underlying lawsuit, a real-estate investment trust alleged that city's zoning decisions were discriminatory and driven by an irrational animus, depriving the trust of its right to equal protection, that the city's zoning decisions were arbitrary, and therefore violated trust's right to substantive due process, and that city council members conspired with third-party landowners to poach the trust's prospective tenants, thereby tortiously interfering with trust's contracts and business expectancies.

The Court of Appeals held that allegations in underlying complaint against city did not fall within the scope of policy's "inverse condemnation" exclusion. The policy excluded liability "arising out of (3)27 any principle of eminent domain, condemnation proceeding, [or] inverse condemnation," and that language could not reasonably be read to extend to liability arising out of all zoning decisions.

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