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INSURANCE - FLORIDA

Public Risk Management of Florida v. Munich Reinsurance America, Inc.

United States Court of Appeals, Eleventh Circuit - June 29, 2022 - F.4th - 2022 WL 2338572

Reinsured, a self-insured risk-management program that insured various local government entities in Florida, brought action against reinsurer, alleging breach of contract and seeking declaratory relief that reinsured was obligated to reimburse reinsurer for defense and coverage it provided to reinsured in underlying § 1983 and inverse condemnation action.

Reinsured brought counterclaims, seeking declaratory judgment that it had no duty to reimburse reinsured. The United States District Court for the Middle District of Florida adopted Report and Recommendation of United States Magistrate Judge and entered summary judgment for reinsurer. Reinsured appealed.

The Court of Appeals held that:

- Reinsured did not have duty to defend insured city, under public officials errors and omissions (E&O) policy, in underlying action;
- Reinsured, a self-insured risk-management program, did not have duty to indemnify insured city for settlement of § 1983 claim in underlying action; and
- Reinsurer did not have duty to reimburse reinsured, a self-insured risk-management program, for its defense and indemnification of city in underlying action.

Under Florida law, insurer, a self-insured risk-management program, did not have duty to defend insured city, under public officials errors and omissions (E&O) policy, in underlying § 1983 and inverse condemnation proceeding, as plaintiffs' alleged Fourth Amendment violations occurred prior to relevant coverage period under policy, and every alleged infringement by city of plaintiffs' possessory interest in their property was part of a series of related wrongful acts and, thus, a single "occurrence" under policy.

Under Florida law, reinsurer did not have duty to reimburse reinsured, a self-insured risk-management program, for its defense and indemnification of city in underlying § 1983 and inverse condemnation action, despite contention that "follow the fortunes" doctrine, which generally bound reinsurers to reinsured's decision to pay claim and required reinsurers to refrain from second guessing a good faith decision to do so, required reinsurer to reimburse reinsured; reinsurance agreement expressly required reinsured to submit to reinsurer proof it paid insured city as well as proof that agreement provided coverage for such payment, but underlying plaintiffs' alleged claims occurred prior to relevant coverage period under governing errors and omissions (E&O) policy.

Under Florida law, as predicted by the District Court, "follow the fortunes" doctrine, which generally bound reinsurers to reinsured's decision to pay claim and required reinsurers to refrain from second guessing a good faith decision to do so, would not be inferred to require reinsurer to reimburse reinsured, a self-insured risk-management program, for its defense and indemnification of city in

underlying § 1983 and inverse condemnation proceeding; parties' reinsurance agreement contained terms that were plainly and unambiguously inconsistent with the doctrine, as it expressly required reinsured to submit to reinsurer proof it paid insured city, as well as proof the agreement provided coverage for such payment.