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INSURANCE - NEW JERSEY

City of Whittier v. Everest National Insurance Company

Court of Appeal, Second District, Division 1, California - December 6, 2023 - Cal.Rptr.3d - 2023 WL 8441663

City brought declaratory judgment action against its excess liability insurers to recover for breach of contract by denying coverage for settlement of police officers' suit alleging retaliation for refusing to participate in and/or reporting unlawful citation and arrest quota.

The Superior Court adopted referee's statement of decision granting insurers' motions for summary disposition and denying city's motion for summary adjudication. City appealed.

The Court of Appeal held, as a matter of first impression that coverage was not barred by statute providing that insurer was not liable for loss caused by wilful act of insured.

Police officers' complaint against city for retaliating against officers for refusing to participate in allegedly unlawful citation and arrest quotas alleged non-willful bases for liability under statute that prohibited retaliation against employee for refusing to participate in activity that would result in violation of law, and, thus, coverage under city's excess liability policy for settlement of officers' claims was not barred by statute providing that insurer was not liable for loss caused by wilful act of insured; alleged acts of "shift averaging" and of setting performance benchmarks by comparing officers' arrest counts were not clearly illegal such that city reasonably could not have believed otherwise.

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