

ALERT

# Civil Rights Action Against Town Is Related to Earlier Suit Enforcing Zoning Laws

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The United States District Court for the Middle District of Pennsylvania has held that a lawsuit alleging civil rights, First Amendment, and substantive due process violations is a Related Claim to an earlier complaint by the same plaintiffs seeking compliance with the insured town's zoning laws. *Borough of Moosic, et al. v. Darwin Professional Underwriters, Inc., et al.*, 2012 WL 2527279 (M.D. Pa. June 29, 2012). Because the earlier complaint preceded the inception of the policy, the court found that the Related Claim provision precluded coverage under a Public Officials Professional Liability Policy for the civil rights lawsuit.

In the underlying dispute, two property owners attempted to challenge a nearby tire company's plans to begin manufacturing operations, but were allegedly thwarted by their town's public officials, who allegedly refused to allow them to speak at public meetings and attempted to intimidate them by sending surveyors to their property. The property owners filed suit against the town, alleging civil conspiracy, adverse possession, violations of their First Amendment and substantive due process rights, and violations of 28 U.S.C. § 1983.

The town sought coverage for the property owners' suit under its Public Officials Professional Liability Policy, which provided specified coverage for any actual or alleged violation of civil rights. The insurer denied coverage on the basis that certain related acts, including the earlier filing of petitions and a Mandamus Complaint by the property owners to compel the town to comply with its own zoning laws, predated the inception of the policy. The town argued that the petitions and Mandamus Complaint were not Claims under the policy, and that even if they were, they were not Related Claims.

## Practice Areas

- D&O and Financial Institution Liability
- E&O for Lawyers, Accountants and Other Professionals
- Insurance
- Litigation
- Professional Liability Defense

In the coverage litigation, the court found that the civil rights lawsuit at issue was not covered because the claim was deemed to precede the inception of the policy. The policy defined "Claim" as "any written demand for monetary damages or Non-Monetary Relief" and "any civil proceeding in a court of law or equity, including any appeal therefrom, which is commenced by the filing of a complaint, motion for judgment, or similar proceeding." The policy defined "Non-Monetary Relief" as "relief or redress in any form other than compensatory or monetary damages." The court found that the Mandamus Complaint was a written demand seeking nonmonetary relief, and therefore constituted a Claim under the policy.

In determining whether the civil rights lawsuit for which coverage was sought was "related" to the Mandamus Complaint, the court looked to the definition of "Related Claim" in the policy: "all claims for Wrongful Acts based upon, arising out of, resulting from, or in any way involving the same or related facts, circumstances, situations, transactions or events or the same or related series of facts, circumstances, situations, transactions or events, whether related logically, causally or in any other way." The court also noted that the policy required that "[a]ll Related Claims will be treated as a single Claim made when the earliest of such Related Claims was first made, or when the earliest of such Related Claims is treated as having been made in accordance with CONDITION F(2), whichever is earlier."

The court held that the civil rights lawsuit and the Mandamus Complaint were Related Claims because the two actions were rooted in the same zoning dispute, concerned the same real estate, concerned the same principal parties, and involved the town's alleged refusal to address the property owners' complaints regarding zoning violations. The property owners' civil rights lawsuit against the town directly resulted from their belief that the town failed to remedy the issues raised in the Mandamus Complaint. The court found that the Mandamus Complaint formed the basic premise on which all of the subsequent claims were based. Because the civil rights lawsuit for which the insured town sought coverage was "related" to the Mandamus Complaint that preceded the inception of the policy, the civil rights suit was treated as single claim first made when the Mandamus Complaint was filed prior to policy inception. Therefore, the property owner's civil rights suit was not covered as it was deemed to precede the policy's inception.

The opinion is available [here](#).