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Virginia Local Government Law

Commercial General Liability Insurance Covers FLSA Claims: Republic Franklin Insurance Company v. Albemarle County School Board

By: Andrew McRoberts. *Wednesday, February 29th, 2012*

Who pays for the defense of FLSA claims against a local government entity, and who pays for the liquidated damages and attorneys' fees if the local government entity loses? The Fourth Circuit Court of Appeals issued an opinion recently which answered these questions: **Republic Franklin Insurance Company v. Albemarle County School Board, No. 10-1961 (4th Cir. February 24, 2012).**

Bus drivers in Albemarle County claimed that their rights under the **Federal Labor Standards Act (FLSA)** were violated, and sought unpaid wages, overtime, liquidated damages and attorney's fees pursuant to **29 U.S.C. § 216(b)** in a federal lawsuit filed in the U.S. District Court for the Western District of Virginia. The **Albemarle County School Board** reported these claims to its CGL insurer, **Republic Franklin Insurance Company**, which denied coverage saying the claims were not "losses" arising from a "wrongful act" covered by its CGL policy. On cross-motions for summary judgment, the federal judge agreed, finding in favor of the insurance company. The court reasoned that payment of due wages and overtime was a "pre-existing duty" and therefore was not a "loss" and not a "wrongful act."

The Albemarle County School Board appealed, arguing that an FLSA violation was, indeed, a "wrongful act" and that although payment of due wages and overtime was a pre-existing duty, the payment of the liquidated damages and attorney's fees was not, and therefore was a "loss" under the CGL policy.

The **Fourth Circuit Court of Appeals** (Niemeyer, Motz and Floyd, Circuit Judges) agreed with the School Board.

The Fourth Circuit held that the district court incorrectly used the "pre-existing duty" doctrine too broadly to not only negate any coverage for due wages and overtime, but also to find no "wrongful act" and no "loss". The Fourth Circuit cited the language of the CGL policies which call for insurance

company liability in the event of a “wrongful act” — broadly defined to include ”any breach of duty.” A violation of the FLSA is plainly such a breach.

The Fourth Circuit similarly relied upon the CGL’s policy’s definition of “loss” to include “any amount which an insured is legally obligated to pay as damages.” The Fourth Circuit cited controlling U.S. Supreme Court precedent that the liquidated damages are not “fines or penalties.” ***Brooklyn Savings Bank v. O’Neil***, 324 U.S. 697, 707 (1944). The Court also relied upon as persuasive Eleventh Circuit and U.S. District Court for the Eastern District of Virginia precedent that in the FLSA context liquidated damages and attorney’s fees are compensatory and not punitive in nature. ***Snapp v. Unlimited Concepts, Inc.***, 208 F.3d 928,934-35 (11th Cir. 2000); ***Lanza v. Sugarland Run Homeowners’ Association***, 97 F. Supp. 2d 737, 740 (E.D. Va. 2000).

In summary, the Fourth Circuit stated, “because the underlying FLSA complaint against the School Board asserts claims for liquidated damages and attorneys’ fees arising, not from a preexisting duty, but because of the School Board’s alleged wrongful acts, we conclude that they are damages resulting from a claim for the alleged wrongful act and therefore are covered losses.”

This decision is significant for local entities that may be subject to FLSA claims because it squarely places FLSA claims within the scope of most CGL policies as alleged “wrongful acts” which may result in a “loss” insurable (and therefore to be defended) by their insurance companies.

Tags: **coverage**, **Federal Labor Standards Act**, **FLSA**, **Fourth Circuit Court of Appeals**, **insurance**