

Florida Appellate Court Reverses Ruling Requiring Insurer To Indemnify Civil Rights Judgment Against Officers

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A Florida appellate court ruled that an insurer had no duty to indemnify an underlying civil rights judgment against police officers because the operative occurrence did not happen during the relevant policy periods. *Certain Underwriters at Lloyd's, London Subscribing to Policy No. JO46137 v. Pierson*, 2021 WL 2213291 (Fla. Dist. Ct. App. June 2, 2021).

Two police officers were found liable for misconduct in a suit brought by a wrongfully incarcerated man. The officers sued their insurers for failing to indemnify the \$7 million judgment. Although the officers' misconduct in obtaining a forced confession occurred prior to the inception of the first policy period, the officers argued that coverage was available pursuant to a policy provision covering "damage direct or consequential . . . on account of personal injury . . . suffered or alleged to have been suffered by any person(s) . . . arising out of any occurrence . . . happening during the period of insurance." A Florida trial court agreed and ruled in the officers' favor. The trial court held that coverage under the policies was triggered because the claimant's damages (*i.e.*, his wrongful incarceration) extended into the policy periods, even though the policies were not in effect when the officers' misconduct occurred.

The appellate court reversed, ruling that coverage was not available because the officers' misconduct did not occur during the policy periods. The court stated: "the fact that [the claimant] suffered the consequences of the Officers' wrongful conduct throughout his incarceration, including while the subject policies were in effect, is irrelevant for purposes of determining whether the Insurer has a duty to indemnify." The court also deemed irrelevant the fact that the claimant was ultimately exonerated during the policy period.

By contrast, in a case presenting different policy language ("injury or damage that . . . happens while this agreement is in effect" or "an event . . . which results in personal injury, bodily injury or property damage sustained, during the policy period"), the Fifth Circuit ruled that insurers were obligated to defend a municipality in a civil rights suit arising out of coerced confessions and fabricated evidence, notwithstanding that the arrests and convictions occurred before the relevant policies inception. *See June 2019 Alert*.

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