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It turned out, there was a mix up when he purchased the insurance, and the insurance company failed to name our client as the insured on the policy. Our client was not covered for this injury, and he was worried about what to do next. Faced with the possibility of having a judgment against him, he came to see us.

We were hired to persuade the insurance company to do the right thing - to cover our client for this injury which should have been covered but for the clerical mix up. I contacted the insurance company to suggest settling the claim. The tenant did not suffer a major injury. It would be cheaper to settle than to fight with us in

Client Prevails Against Insurer on Denial of Insurance Coverage

By: Chester A. Lizak

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A Recent Decision in Mechanic’s Lien Law Affecting Public Works

By: Eugene A. Di Monte

The Illinois Supreme Court in an opinion filed October 17, 2014, in the case of Lake Country Grading Company, LLC v. The Village of Antioch clarified the law requiring completion and payment bonds for public works projects.

A grading company sued the Village alleging that the Village failed to obtain a payment bond as required by the Construction Bond Act; 30 ILCS 550/1 (The Bond Act). Both the trial and appellate courts ruled in favor of the grading company.

The Bond Act requires public bodies, when contracting for public works costing more than $50,000, to obtain from the contractor a payment bond guaranteeing that all contractors who perform construction services, including labor and materials, be paid for their services and materials.

The Bond Act also requires a public body to obtain a performance bond (a completion bond) guaranteeing that all work contracted for by the contractor be completed by the bond company if the contractor fails to do so.

In the case mentioned herein the bond contained language guaranteeing completion of the project. However, it did not include language guaranteeing payment.

The Bond Act also requires a claimant to serve a notice of claim against the bond upon the public body, within 180 days after claimant’s last day worked on the project.

In the subject case the Plaintiff did not serve the 180 day notice on the Village. Instead, it filed suit against the Village for failure to obtain a payment bond.

The Supreme Court ruled that although no payment guarantee language was included in the bond in question, the bond is presumed to include a payment guarantee. This is because of the language in Section 1 of the Bond Act that each bond is deemed to contain provisions ensuring payment to all persons who perform labor or provide materials and guaranteeing completion “whether such provisions are inserted in such bond or not.”

The Supreme Court ruled that the above language from the Bond Act unambiguously provided that both payment and completion provisions are deemed to be included in the bond as a matter of law. Therefore only the one bond was necessary as it was deemed to include both provisions. Separate bond or expense language for each provision were not necessary. Thus the Village acted in compliance with the Bond Act.

The Supreme Court overruled both the trial and appellate court and held in favor of the Village, determining that it had in fact obtained a bond which included both payment and completion provisions in accordance with the Bond Act.
The courts continue to look past the language of confidentiality and non-solicitation and non-competition agreements and to focus on whether the employer has a “thing” worthy of protection and whether the employer has given the employee adequate, independent consideration to support the restrictive covenant.

In *nClosures, Inc. v. Block and Company, Inc.*, October 2014, the 7th Circuit Court of Appeals (covering Illinois, Indiana, and Wisconsin) reminded businesses that their confidentiality agreements will not be enforceable unless the business takes reasonable steps to protect the alleged confidential information. nClosures was an industrial design firm. It hired an independent contractor to design metal enclosures for items like the iPad. Block and Company manufactured the enclosures for nClosures. Before the parties began doing business with each other, they signed a confidentiality agreement in anticipation of the potential business relationship. The agreement stated that nClosure's confidential information would be used solely for the purpose of engaging in discussions and evaluating a potential business relationship regarding Block’s manufacture of the enclosures. Block subsequently started manufacturing the enclosures. Shortly after nClosure’s product entered the market for sale, Block developed a competing design for its own tablet enclosure. nClosure sued Block for breach of the confidentiality agreement.

The court granted Block’s motion for summary judgment, finding that nClosure did not take reasonable steps to keep its proprietary information confidential. The court acknowledged the elements a party must show to bring a successful breach of contract claim, but stated that when assessing the enforceability of a confidentiality agreement, the agreement will be enforced only when the information sought to be protected is actually confidential and reasonable efforts were made [by the owner] to keep it confidential." The court noted the following concerning nClosure's conduct:

1. nClosure did not enter into a confidentiality agreement with the independent contractor who designed the enclosure.
2. nClosure did not require Block’s engineers or other employees to sign confidentiality agreements before accessing the design information.
3. The design drawings were not marked “confidential” or “contain proprietary information.”
4. The design drawings were not kept under lock and key.
5. The design drawings were not stored on a computer with limited access.

*Takeaway:* Companies should review all confidentiality agreements for content, should identify gaps in coverage, and should conduct themselves in accordance with the non-disclosure clause.

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DiMonte & Lizak - Highlights

Di Monte & Lizak Takes on the Chicago Cubs

Tom Lombardo and Abraham Brustein filed suit on behalf of several rooftop businesses which overlook Wrigley Field (the “Rooftops”), against the Chicago Cubs and its Chairman, Thomas Ricketts, in federal court on January 20, 2015. The complaint charges the Cubs with starting to install a jumbotron, video board, and various other large signs that will block the Rooftops and breach a 20-year contract that guarantees the Rooftops an unobstructed view into the ballpark in return for millions of dollars in royalty payments. The Cubs are also accused of demanding that the Rooftops conspire with the Cubs to engage in an illegal price-fixing scheme to raise ticket prices in violation of the Sherman Act, as well as commercial defamation, deceptive business practices and other claims.

Di Monte & Lizak Gives Back to the Community

On February 18, 2015, Julia Smolka and Derek Samz presented the Credit Abuse Resistance Education (CARE) program at Ridgewood High School in Norridge. The CARE program consists of bankruptcy lawyers in the Chicago area educating college-bound students about the necessities, and pitfalls, of credit-card and student loan debt. More information on the CARE program can be obtained at www.carechicago.com.

Patrick Owens and Jonathan Morton Present at Continuing Education Conference

On February 25, 2015, Patrick and Jonathan presented Estate Planning for Digital Assets to certified public accountants and other tax planning professionals. The presentation focused on current planning techniques that estate planners can use to make sure that digital assets are appropriately dealt with upon the client’s death. The speakers also discussed pending legislation, and changes in user agreements, including Facebook’s decision to allow users to name a Legacy user to dispose of the account.

Client Prevails Against Insurer on Denial of Insurance Coverage

continued from front page

We filed an answer to the personal injury claim of the tenant, a counterclaim lawsuit against the insurance company, and a third party lawsuit against the insurance broker for charging our client the insurance premium, but failing to provide coverage for our client. We initiated discovery and noticed up depositions of the parties. Suddenly, all of the parties realized that this matter should be resolved.

The insurance company settled the claim with the injured tenant. It then amended the insurance policy to name our client as the insured. The insurance company agreed to pay our client’s attorneys fees in full, including paying the retainer our client paid us.

Most denials of insurance claims do not involve facts as clear as in the above case. Insurance companies usually deny claims based upon language provisions in the policy, and the failure of the insured to comply with such policy language. Among the reasons set forth for denial of coverage is the failure to timely renew the policy, failure to pay the premium, a claim that another insurance company is primarily responsible, or a claim that the insurance company is not responsible for intentional conduct or claims for punitive damages. Quite often the basis for the denial of the claim is found under the “Exclusions” listed in the policy.

In some cases the reason for the denial involves a mistake as to the facts. The insured can deliver a copy of a canceled check that proves that the insurer received the check on or before the grace period had expired. Where the facts are clear, the insured need only contact his insurance agent to clear up the mistake.

However, most denials of claims involve interpretation of the terms of the insurance contract, application of the insurance laws of the state, issues of public policy, and other related questions.

If you receive a denial of claim, assemble the denial letter, declaration page, and the insurance policy, then come see us. Your insurance coverage attorney will examine the foregoing documents, and be able to give you an opinion as to the merits of the insurance company's denial. If the matter is not resolved expeditiously, it is highly likely that you will be able to recover the attorneys fees that you expended if the insurance company has wrongfully denied your claim.

Chet Lizak's practice includes specializing in insurance coverage questions.
An experienced, multi-practice law firm working as a team to provide practical counsel and quality services.