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**Gallagher Sharp Newsflash: Umbrella Policy Covers Housing Discrimination Claim**

On August 18, 2015, the Supreme Court of Ohio found that an umbrella policy covers a housing discrimination claim. The court focused on a claim by the plaintiff of emotional distress as well as the policy definition of “personal injury”.

In *Granger v. Auto-Owners Ins.*, 2015-Ohio-3279, a landlord was sued for alleged discrimination against a prospective African-American tenant on the basis of familial status and race in violation of 42 U.S.C. 3604 and R.C. 4112.02(H). The complaint included an allegation of emotional distress. On May 18, 2011, the landlord/policyholder tendered the complaint to the insurer under his primary landlord-tenant policy. On June 8, 2011, the insurer denied coverage because there were no allegations in the complaint that fell under that policy’s definition of “personal injury.” On June 9, 2011 the policyholder re-tendered the complaint, this time under his landlord’s umbrella policy. The umbrella policy, which defined “personal injury” more broadly than the primary policy, stated that “personal injury” means: “(a) bodily injury, sickness, disease, disability or shock; (b) mental anguish or mental injury; (c) false arrest, false imprisonment, wrongful eviction, wrongful detention, malicious prosecution or *humiliation*; and (d) libel, slander, defamation of character or invasion of privacy; including resulting death, sustained by any person.” (Emphasis added.)

The insurer did not immediately respond to the second tender, and on July 11, 2011, the policyholder settled the discrimination suit. He then sued the umbrella insurer for failing to provide coverage. Cross-motions for summary judgment were filed, and the trial court granted the insurer’s motion for summary judgment. The court of appeals reversed the trial court’s judgment, and the Supreme Court of Ohio, addressing only the insurer’s duty to defend under the umbrella policy, affirmed the court of appeals’ decision.

Justice Pfeiffer in the majority opinion found that the “the crux of the case” was the umbrella policy included coverage for particular harms rather than just for particular causes of action. The prospective tenant’s complaint included a claim of emotional distress; the Court held that this was enough to invoke coverage under the policy. Humiliation is a recognized injury in housing discrimination cases, and the majority found that the prospective tenant’s broad allegation of emotional distress arguably contained an allegation of “humiliation.” The majority declined to apply the policy’s Intentional-Acts exclusion and the inferred-intent doctrine because the appropriate question was whether the insured expected or intended the prospective tenant’s alleged “personal injury” (“humiliation”), not whether the insured expected or intended the alleged discrimination.

Justices Kennedy and O’Donnell dissented asserting that the alleged discrimination and injury were intrinsically tied, and when the insured acted in a discriminatory manner the insured intended the injury (the “humiliation”) as a matter of law.

The full opinion is attached and can be found at: <http://www.sconet.state.oh.us/ROD/docs/pdf/0/2015/2015-Ohio-3279.pdf>

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