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NINTH CIRCUIT COURT OF APPEALS HOLDS IDAHO TORT CLAIM ACT ENDORSEMENT DOES NOT REDUCE ORIGINAL POLICY LIMITS

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The Ninth Circuit Court of Appeals found an insurer's Idaho Tort Claim Act Endorsement ambiguous, to the extent it attempted to incorporate a reduced liability limit found in the state's Act. In *Ferguson v. Coregis Ins. Co.,* --- P.3d ----, 2008 WL 2246535 (June 3, 2008), plaintiff John Ferguson filed an action on behalf of his son seeking a declaratory judgment as to the general liability limit of an insurance policy ("the Policy") sold to the Coeur d'Alene School District by defendant Coregis Insurance Company ("Coregis"). Coregis moved, and Ferguson cross-moved, for summary judgment on the issue. The district court granted Coregis' motion.

The Ninth Circuit reversed the district court and granted Ferguson's motion, agreeing with Ferguson that the liability limits were $2,000,000, not $500,000 as Coregis had argued. The Court, applying Idaho law, held that the Endorsement purporting to change the limits of the Policy did not, in fact, reduce the $2,000,000 limits originally specified in the Policy. The Endorsement read as follows:

Idaho Tort Claim Act Endorsement
This endorsement modifies insurance provided under the following:

Idaho School Package Policy
Section II, General Liability, Wrongful Acts and Premises Medical Payments Coverage; d. Conditions; 8. Limits of Liability, a. is deleted in its entirety and replaced by the following:

> 8.a. The limit of liability per the amount indicated by the Idaho Code § 6-924 as applicable to each occurrence or each wrongful act, is the limit of the Company's liability for all damages sustained as the result of any one occurrence or wrongful act; unless § 6-924 is ruled invalid thereby reverting to the limit of liability as stated in the Declarations. The amount determined by a court of competent jurisdiction for liable action taken

outside the state of Idaho renders the liability limitation included in the Idaho Code § 6-924 inapplicable and the limit of liability as stated in the Declarations then applies. . . .

Idaho Code § 6-924, referenced in the endorsement, provides as follows:

Policy Limits – Minimum Requirements
Every Policy or contract of insurance or comprehensive liability plan of a governmental entity as permitted under the provisions of this chapter shall provide that the insurance carrier pay on behalf of the insured governmental entity or its employee to a limit of not less than five hundred thousand dollars ($500,000) for bodily or personal injury, death, or property damage or loss as the result of any one (1) occurrence or accident, regardless of the number of persons injured or the number of claimants.

Idaho Code § 6-924 (emphasis added).

The Court turned to guidelines for policy interpretation under Idaho law, noting that where a policy is "reasonably subject to differing interpretations, the language is ambiguous and its meaning is a question of fact." The Court agreed that the Policy language was ambiguous given that, rather than specifying a particular limit, the Policy set the "limit of liability" to "the amount indicated by the Idaho Code § 6-924[.]" The Court, however, then pointed out that the Idaho Code does not specify such a limit of liability:

[T]here is no such "limit of liability" in § 6-924. Section 6-924 states a required per occurrence minimum amount of insurance a governmental entity must purchase. Section 6-924 simply does not set a maximum limit of liability. It sets a minimum dollar amount of coverage.
. . .
Because § 6-924 mandates a minimum amount of coverage, not a maximum limit on liability, the Policy endorsement provision which refers to a "limit of liability" refers to a non-existent standard.

The Court thus reversed the district court and rendered judgment in plaintiff Ferguson's favor, holding that the limits of the Policy were $2,000,000. Coregis has the right to seek review by the United States Supreme Court, although the Court rarely grants certiorari.

William Knowles and Matthew Taylor will issue a supplemental Alert if review is requested and granted. Cozen O'Connor is a nationally recognized leader in representing the insurance industry in all coverage areas