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## Insurer Needn't Pay In Wrongful Conviction Case, Court Says

By **Jeff Sistrunk**

Law360, Los Angeles (September 14, 2017, 8:57 PM EDT) -- Westport Insurance Corp. doesn't have to cover any of an Illinois city's costs in a wrongful prosecution suit brought by a man who spent 20 years in prison for a rape and murder before being cleared by DNA evidence, a federal judge ruled Wednesday, vacating a prior decision that the insurer was on the hook.

Westport had issued the city of Waukegan a series of general and law enforcement liability policies for a period spanning November 1997 through November 2000. In December 2014, U.S. District Judge John W. Darrah held that the insurer owed the city a defense in the underlying suit brought by Juan Rivera because Rivera's Fifth Amendment rights against self-incrimination had been violated when his coerced confession was introduced as evidence at a retrial in 1998, within Westport's policy period.

But in early August, the Illinois Appellate Court held in Waukegan's separate coverage dispute with another insurer, St. Paul Fire and Marine Insurance Co., that the proper trigger of coverage was the authorities' misconduct that led to Rivera's initial conviction in 1992.

Armed with that appellate decision, Westport sought summary judgment on its coverage obligations, arguing that it has no duty to defend or indemnify Waukegan because the initial events giving rise to Rivera's claimed injury occurred six years before its first policy went into effect. On Wednesday, U.S. District Judge Jorge L. Alonso agreed and vacated Judge Darrah's 2014 decision against Westport.

"As far as this court is aware, St. Paul is the only Illinois decision to directly address trigger of coverage for a Fifth Amendment self-incrimination clause civil rights claim," Judge Alonso wrote. "It did so in a case that involved coverage for the exact same claim of the exact same underlying action that also underlies this case, under circumstances that were essentially indistinguishable. This court will adhere to the Illinois Appellate Court's pronouncement in St. Paul."

Rivera was tried, convicted and sentenced to life in prison three separate times for the 1992 murder of an 11-year old girl, but walked free in January 2012 after the Illinois Appellate Court vacated his final guilty verdict and barred a retrial. Later that year, he launched a federal suit against the city and several police officers, among others, alleging the police concealed exculpatory evidence and coerced him into signing an incriminating statement during a brutal four-day interrogation. According to court papers, the case ultimately settled for a total of \$20 million, of which Waukegan's share was \$7.5 million.

Rivera's suit led to a spate of litigation between Waukegan and several of its insurers. Westport had declined to defend the city in the litigation and filed suit in Illinois federal court January 2014 seeking a ruling confirming its position.

In his December 2014 decision, Judge Darrah held that Westport had a duty to defend because the injuries Rivera said he suffered as a result of the use of the coerced confession during the 1998 retrial could potentially fall within the scope of the policies' coverage. The case was subsequently re-assigned to Judge Alonso, who denied Westport's motion for reconsideration.

On Aug. 1, though, the Illinois Appellate Court issued its decision in the St. Paul matter. Westport cited

the new ruling in support of its bid for summary judgment, asserting that Judge Alonso is bound by the state appeals court's findings.

Judge Alonso agreed that, under the St. Paul decision, no triggering event took place during Westport's policy period, and the insurer therefore has no duty to cover any of Waukegan's defense costs or settlement payment.

An attorney for Westport declined to comment. An attorney for Waukegan did not immediately respond to a request for comment.

Westport is represented by Adam H. Fleischer, R. Patrick Bedell, and Justin K. Seigler of BatesCarey LLP.

The City of Waukegan and affiliated defendants are represented by Paulette A. Petretti and Darcee C. Williams of Scariano Himes & Petrarca.

The case is Westport Insurance Corp. v. City of Waukegan et al., case number 1:14-cv-00419, in the U.S. District Court for the Northern District of Illinois, Eastern Division.

--Editing by Jill Coffey.