

## Hirtzel, Lettieri, Novak Win Motion to Dismiss Breach of Insurance Contract

In collaboration, FHMS attorneys Gregory Hirtzel, Frances Lettieri, and Benjamin Novak won a Motion to Dismiss a case in federal court which alleged that their client, an insurance company, breached its insurance contract by failing to pay for the costs of repairing water damage in a construction project.

The plaintiff was involved in the construction of a hotel in New Jersey. As the construction project was continuing, several parts of the unfinished construction suffered significant water damage. The insured alleged that it had to incur substantial fees in order to remediate this water damage, and sought coverage under its liability policy, issued by the insurer. The insured argued that it was obligated to pay for the remediation, and therefore, that its liability insurance policy should apply. The insurer denied coverage and the insured sued, alleging breach of contract and bad faith. Hirtzel, Lettieri, and Novak succeeded in having the bad faith claim withdrawn and filed a motion to dismiss the breach of contract claim.

Hirtzel, Lettieri, and Novak argued that the breach of contract action had to be dismissed because the operative complaint did not allege that a “suit” or claim was ever made against the insured in connection with the water damage and therefore, that the insuring agreement of the insurance policy had not been triggered. They argued that the insured’s expenditure of money to honor its contractual obligations was not sufficient to trigger a liability insurance policy. The court agreed and dismissed the complaint with prejudice.

This decision is notable in that it reinforces the rule that coverage under a liability insurance policy is not triggered unless there is a claim by a third party against the insured.

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