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Municipalities Beware: The Perils of Enacting Immigration Ordinances and Know What Your Insurance Policy Covers

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Two weeks ago, a panel from the Third Circuit Court of Appeals upheld a District Court decision to require the City of Hazleton, PA, to pay \$2.4 million in legal fees to Pedro Lozano, Casa Dominicana of Hazleton Inc., Hazleton Hispanic Business Association and the Pennsylvania Statewide Latino Coalition incurred when they challenged the constitutionality of certain Hazleton ordinances which in 2007 the Third Circuit had already found to be unconstitutional.

The ordinances in question sought to fine landlords for renting to undocumented aliens, deny businesses permits for employing undocumented aliens, and authorized the town to investigate the legal status of an employee or tenant upon the request of any citizen, business, or organization. Hazleton's misguided efforts sought to curb an influx of potentially undocumented aliens, attributing an increase in crime and use of the town's public services to those individuals. The Circuit Court had found that the town could not enact such ordinances as they were pre-empted by federal law.

In its most recent decision, the Third Circuit panel held that the town's insurer was only required to cover decisions which awarded monetary damages, but not the \$2.4 million in plaintiffs' legal fees. In fact, plaintiffs were not seeking any monetary damages, and the insurer successfully argued that, according to definitions in the town's insurance policy, the company should not be liable for legal fees. Hazleton's city solicitor says the town plans to seek review of this decision by the US Supreme Court. The town is already in the process of petitioning the Supreme Court to review the decision that the ordinances are unconstitutional.

Two lessons can be learned from this case: (1) do not attempt to enact laws in the immigration space as they are pre-empted by existing federal law, and (2) review your municipality's insurance policy to ensure that legal fees are covered in the event of this type of, or indeed any, lawsuit.

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