



NUISANCE LAWSUITS

As most of us are all too aware, nuisance lawsuits continue to be a fact of life. While tort reform is making headway in some states, it is far from universal. BancInsure recently indemnified a bank for defense costs in such a case.

A bank employee sued the bank and its president for discrimination under the Americans with Disabilities Act. The lawsuit alleged “retaliation” for being a qualified person with a disability and that her treatment allegedly was so oppressive that it caused her to involuntarily resign.

The bank hired this teller in mid-1998. In early 1999, she supposedly had back surgery. However, she was only off work for about two weeks, and the bank did not receive anything from a doctor about work restrictions. Bank personnel doubt she really had surgery, due to the shortness of her absence and the lack of restrictions when she returned to work. In mid-2001 she indeed had back surgery. She was off work approximately one month. Upon return, she presented a physician’s certificate indicating that her work should be limited to no more than four hours a day. This was accommodated until approximately a week later when she presented a physician’s certificate indicating that she could return to work without any restrictions. At that time she returned to work on a full-time basis.

There were no real problems with her work from the time of her employment until her 2001 surgery. However, there was a marked decline in her job performance after she returned to work from surgery. She began to make and take excessive personal telephone calls, even while waiting on customers. She began violating procedures for cashing checks and securing currency. She was generally inattentive to the bank’s customers.

She was counseled concerning her job performance numerous times. In some cases, her actions and omissions prompted the bank to issue to policies and procedures that applied to all the employees of the bank. Additionally, the bank provided a stool for her teller station after the surgery and other employees aided her by lifting heavy objects such as bags of coins.

In early 2002, the bank president had a meeting with her concerning her job performance. Several days later she came back from lunch and announced to the bank’s president her intention to resign. He asked her if she wanted to think about this for a while. She responded that she did not. She quit that afternoon. Shortly after resigning from the bank, she obtained other employment, but subsequently resigned that employment.

In early 2003 she filed a lawsuit against the bank and its president as described above. From the facts as stated, there was clearly no basis for the lawsuit; however, the bank spent its \$10,000 retention and BancInsure indemnified the bank approximately \$12,000 in additional defense costs before she abandoned the claim.

This is another example for the need for insurance coverage even when you have done nothing wrong.

BancInsure's Directors' and Officers' Liability Insurance Policy offers protection for a board range of claims made against directors and officers. BancInsure also offers entity coverage to the bank for certain claims in the form of endorsements to the Directors' and Officers' Policy covering bankers errors and omissions, professional services, employment practices liability, lender liability, trust department errors and omissions, and mutual funds, insurance and annuity sales. If you would like to learn more about BancInsure's Directors' and Officers' Liability Insurance Policy and its entity endorsements, please contact your BancInsure marketing representative.