

Unanticipated Exposures on License and Permit Bonds May Give Sureties Cause for Concern

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Sureties historically consider statutory license and permit bonds to be of limited scope. A recent decision from the Eastern District of North Carolina – *Owens v. Dixie Motor Co.*, – threatens this relatively secure view with the prospect of unanticipated and far-ranging exposure for the license and permit bond surety. Like all surety bonds, license and permit bonds are to be interpreted according to the standards that govern the construction of contracts in general. License and permit bonds also are creatures of statute; practitioners and sureties thus must closely scrutinize both the plain language of the statute or ordinance upon which a particular license or permit bond is based and the legislative intent of the jurisdiction’s enacting body. This analysis is essential to fully understand the requirements imposed upon the principal and the guarantee provided by the surety executing the bond. While the predicate for liability is found in the language of the bond itself, analysis of the statute mandating the obligation and the intent of the enacting body may be necessary to determine whether the predicate has been satisfied. Thus, a license and permit bond executed to satisfy a statutory requirement should be construed in a manner consistent with the controlling statute. In *Owens*, Western Surety Company executed a motor vehicle dealer bond on behalf of Dixie Motor Company, as principal. This type of bond is generally designed to protect the car-buying consumer by guaranteeing that the licensed dealer (1) complies with the conditions of a written contract in connection with the sale or exchange of a motor vehicle and (2) adheres to the controlling state law regulating the conduct of the business. The bond provides a remedy to an aggrieved consumer and, although the penal sum is generally modest, it offers some assurance of financial accountability. The plaintiff, Nina Owens, purchased a vehicle from Dixie Motor. Several months later, Ms. Owens allegedly discovered that a Dixie Motor employee pulled her personal information to falsify a credit application. The information in the credit report was subsequently disseminated to a prison inmate, resulting in Ms. Owens’ fear of future harm from the prison inmate and/or his associates. Ms. Owens alleged that Western Surety was liable to her under the bond for damages resulting from the employee’s misuse of her personal information. To assert a claim against the bond, Ms. Owens was required to demonstrate standing as a purchaser under the controlling

statute, § 20-288(e) of the North Carolina General Statutes, and allege that Dixie Motor violated the conditions of the obligation of the bond, *i.e.*, that Dixie Motor failed to comply with the law regulating its business. The statute imposes liability on a surety to “any purchaser” of a motor vehicle who suffers loss or damage resulting from the principal/dealer’s in violation of § 20-294(6) and (7) of the North Carolina General Statutes. In support of her claim against the bond, Ms. Owens alleged Dixie Motor violated Article 12 by engaging in unfair and deceptive practices and false advertising related to its licensed dealership, in violation of N.C. Gen. Stat. of § 20-294(6) and (7). Western Surety unsuccessfully moved to dismiss Ms. Owens’ claim, contending that she did not qualify as “any purchaser” within the meaning of § 20-288(e). Western Surety argued that “there was nothing illegal in connection with Nina Owens’ earlier vehicle purchase, which occurred long before her alleged injuries at the hand of the principal’s employee” and, therefore, she did not qualify as “any purchaser” under the statute. In denying Western Surety’s motion to dismiss, the *Owens* court broadly interpreted § 20-288(e) and held that Nina Owens sufficiently pled a claim against Western Surety. The *Owens* court determined that the statute was intended to grant broad remedies and that “no court has ever held that any purchaser of a vehicle was without a cause of action under the statute.” The *Owens* court expansively construed the classification of persons qualifying as a “purchaser”, explaining that courts “have neither authority nor reason to narrow the broad class of purchasers protected by the statute’s plain language.” However, the “illegal conduct” alleged – an employee’s misuse of personal information – does not fit within the definition of unfair and deceptive practices or false advertising as defined by the controlling statute. Thus, although the operative statute appears to limit recovery under the bond, the *Owens* court instead found that the statute protects “any purchaser of a motor vehicle from damages associated with [any] illegal activity . . .” as long as the illegal activity alleged is loosely related to a motor vehicle purchase. While the impact of *Owens* remains uncertain, sureties and practitioners must be cognizant of its holding and anticipate that claimants’ attorneys and perhaps other courts may rely on its dicta as support for expanding the obligations of the surety under statutorily mandated bonds. Since the penal sums of most license or permit bonds are relatively modest, it is axiomatic that state legislatures and sureties intended clear limitations on the scope of coverage afforded by these instruments. Allowing coverage for broad-based indemnity claims such as the subsequent malfeasance of a licensee’s employee or the disparate liabilities of the motor vehicle dealer (or any principal) cannot be what state legislatures intended or the surety agreed to cover in its bond. For example, the Florida Supreme Court recognized statutory motor vehicle dealer bonds are limited in scope and correctly predicted how an overly broad application of a bond’s coverage to violations of “any law of the state” would “substantially deplete” the fund created by the bond. “If the obligation was as open-ended as asserted by the claimants, few sureties and no banks would provide the bond or letter of credit to make this statutory scheme work. *Owens* may prove to be an anomaly resulting from one court’s overly expansive interpretation of the language and intent behind the operative North Carolina statute. However, to reduce the possibility of unanticipated exposures, those in the surety industry must understand how the controlling statutes in each jurisdiction were intended to operate. While language of the statute itself should be incorporated into the bond by specific reference, it also may

be advisable to refer to the purpose and/or actual intent behind the legislation to avoid improvident interpretations. **Republished with permission by the American Bar Association** ABA Fidelity & Surety Law Committee Newsletter (Spring 2014). © 2014 by the American Bar Association. *This information or any portion thereof may not be copied or disseminated in any form or by any means or downloaded or stored in an electronic database or retrieval system without the express written consent of the American Bar Association.*

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