

Indiana Adopts Third-Party Exception for Recovery of Attorney Fees

In *Masonic Temple Assn. of Crawfordsville v. Indiana Farmers Mutual Ins. Co.*, 387 N.E. 2d 1032 (Ind. Ct. App. 2005), the Masonic Temple in Montgomery County sustained property damage due to improper excavation performed during the construction on an adjacent building. The Temple filed a claim for property damage with its insurer, Indiana Farmers, and the insurer denied coverage. The Temple then incurred legal fees in pursuing a direct claim against the contractor. After settling its case with the contractor, the Temple argued that Indiana Farmers was responsible for payment of all attorney fees incurred in pursuing a claim against the third-party, on the grounds that pursuing a direct action was only necessary because Indiana Farmers in the first instance breached its contract by denying coverage. In finding for the Temple, the Indiana Court of Appeals relied on law in other jurisdictions in adopting the so called “third-party exception” to the American rule that each party to litigation must pay its own attorney fees. The elements needed to satisfy this exception are: 1) the plaintiff became involved in a legal dispute because of the defendant’s breach of contractual obligations or other wrongful acts; 2) litigation was with a third-party and not the defendant, and; 3) the fees were incurred in that third-party litigation. This exception is premised upon the principal that attorney fees are, in certain circumstances, foreseeable damages incurred by a party which are caused by, and flow naturally from, the wrongful act of the defendant.