

Missouri Court Holds Coverage for Wrongful Conviction Triggered by Arrest

March 2013

A Missouri appellate court has held that the triggering event for insurance coverage purposes in a civil rights action based on wrongful arrest and incarceration occurred upon the date of arrest, when the underlying criminal action was instituted. *City of Lee's Summit v. Missouri Public Entity Risk Management*, 2012 WL 6681961 (Mo. App. Ct. Dec. 26, 2012).

The insurer, a liability risk sharing pool for state governmental entities, issued to the insured municipality two consecutive public official errors and omissions policies with policy periods between 2004 and 2006, and retroactive coverage between 2001 and 2004. In 2005, the insured municipality and several city officials sought coverage under the policies for a lawsuit asserting claims for constitutional and common law injuries resulting from wrongful arrest, conviction and incarceration. The claimant alleged that he was wrongfully arrested and accused in 1998. Additionally, the claimant contended that the insured officials violated his rights when they failed to disclose exculpatory evidence during his 1999 trial, which resulted in a conviction. The conviction was overturned in 2002, and the claimant was tried a second time in 2004, resulting in a hung jury, and a third time in 2005, resulting in an acquittal. The insurer denied coverage on the grounds that the "occurrence" for purposes of insurance coverage took place in 1998 when the claimant was arrested, which was prior to the inception of the policies.

In the following coverage litigation, the court held that the triggering event for purposes of insurance coverage occurred in April 1998, when the claimant was arrested and the underlying charges were filed. In so holding, the court noted that cases involving deprivation of civil rights related to an accused's wrongful arrest, prosecution or conviction are analogous to claims for malicious prosecution with regard to trigger of coverage. As such, Missouri courts have determined that coverage for malicious prosecution claims occurs at the institution of the underlying action. The court rejected the insured's contention that coverage existed because the claimants' injuries were repeated or ongoing over several years, explaining that the multiple trigger theory is typically applied in the asbestos context, where the claimant's injury may not be evident for several years after exposure. The court stated that the rationale for applying a multiple trigger theory is not well-suited for malicious prosecution and similar due process cases because the injury is evident at the outset. According to the court, "in malicious prosecution cases, there is no interval between arrest and injury that would allow an insurance company to terminate coverage" because "[t]he plaintiff faces incarceration, humiliation, and damage to reputation as soon as the charges are filed."