

Eighth Circuit Rejects Multiple Trigger Theory and Applies Reasonable Expectations Doctrine to Find Coverage Under One Policy Year

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The United States Court of Appeals for the Eighth Circuit, applying Iowa law, has rejected the application of the multiple trigger theory to a claim for wrongful arrest, prosecution and incarceration claims. *Chicago Ins. Co. v. City of Council Bluffs*, 2013 WL 1798995 (8th Cir. April 30, 2013). The court also held that the policy in effect when the claimants were arrested was triggered, and it provided coverage pursuant to the reasonable expectations doctrine because, even though it excluded coverage for damages resulting from intentional acts, it expressly provided coverage for damages resulting from malicious prosecution.

The claimants were arrested and convicted for the murder of a retired police officer in 1978 and received life sentences that same year. In 2003, the Iowa Supreme Court concluded that the claimants' due process rights to a fair trial were violated and released the claimants from prison. The claimants filed suit against the insured, among others, alleging violations of their civil rights sounding in malicious prosecution. The insured sought coverage under two excess policies issued by one insurer for successive annual periods between 1983 and 1985 and under five additional excess policies issued by a different insurer for successive annual periods between 1977 and 1982. The insurers filed a declaratory judgment action to determine which, if any, policy or policies responded to the matter.

In reaching its decision, the Eighth Circuit examined its prior decision in *Genesis Insurance Co. v. City of Council Bluffs*, 677 F.3d 806 (8th Cir. 2012), which was a related action regarding whether two policies issued by a third insurer provided the insured with coverage for the same claim. In *Genesis*, the court rejected application of the multiple trigger theory in the context of wrongful arrest, prosecution and incarceration claims and predicted that the Iowa Supreme Court would hold that "the tort of malicious prosecution occurs, for insurance purposes, on the date the underlying charges are filed." The court rejected the insured's argument that the policies at issue differed from those in *Genesis* because they only required that some injury arise during the policy period and did not require the injury or damages to arise during the policy period, and noted that the argument that there was continuing misconduct and continuing injury during the terms of the policies was expressly rejected in *Genesis*.

In finding that the policy issued for the period from 1977 to 1978 provided coverage for the matter, the court relied on the reasonable expectations doctrine. Although the policy excluded coverage for damages resulting from intentional acts, it expressly included coverage for damages arising from “malicious prosecution.” Thus, the court concluded that an ordinary layperson would have misunderstood the policy's scope of coverage and that, accordingly, the policy in effect when the claimants were arrested—between 1977 and 1978—provided coverage.