

Criminal Acts Exclusions Bar Coverage for Assault by Jailer

May 2005

An intermediate Texas court has held that an exclusion for criminal acts under a law enforcement liability policy barred coverage for allegations of an unprovoked assault by a jailer on a detainee. *Texas Ass'n of Political Subdivisions-Law Enforcement v. Bernal*, 2005 WL 995465 (Tex. App. Apr. 27, 2005). The policy provided coverage for "those sums that the covered party becomes legally obligated to pay as 'damages' resulting from a 'wrongful act' to which this coverage applies that is committed during the course and scope of 'law enforcement activities.'" The policy defined "wrongful act" as "any act, error or omission flowing from or originating out of a 'law enforcement activity.'" The policy excluded coverage for "[a]ny act, error or omission which is dishonest, fraudulent or criminal." The underlying complaint alleged that without provocation, a jailer assaulted a detainee. The court found that the criminal acts exclusion barred coverage because even though jailers are allowed to use some force for security purposes, the underlying complaint alleged that the assault was unprovoked and that the force was excessive. Accordingly, as only an intentional, unprovoked assault was alleged, the court ruled that the exclusion was applicable and that no duty to defend the lawsuit arose.

For more information, please contact us at 202.719.7130.