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ALERT

Criminal Acts Exclusion Triggered without Criminal Adjudication by Insured's Admission of Elements of Crime

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The United States Court of Appeals for the Sixth Circuit, applying Kentucky law, has held that a criminal acts exclusion applied to bar indemnity coverage for a judgment against a doctor in a medical malpractice action because the doctor admitted the necessary elements of a crime, precluding the necessity of a criminal adjudication of guilt to trigger the exclusion. *Medical Protective Co. v. Duma*, 2012 WL 1522663 (6th Cir. May 1, 2012).

The insured, a doctor, consumed a large amount of vodka before he delivered a baby without anyone noticing he was intoxicated. The mother and child suffered labor-related injuries during the delivery. When the smell of alcohol was detected after the delivery, a blood alcohol test was administered on the doctor, which indicated a highly elevated blood alcohol level. The mother sued for labor related injuries and obtained a judgment against the doctor.

The doctor's insurer filed a declaratory judgment action seeking a determination that it had no obligation to indemnify the doctor for the judgment because the policy's criminal acts exclusion barred coverage. The criminal acts exclusion precluded coverage for "payment of damages . . . in any claim for damages if said damages are in consequence of the performance of a criminal act . . . ." The insurer contended that the exclusion applied because the doctor's actions constituted the misdemeanor of wanton endangerment under Kentucky law, which was defined as "when [a person] wantonly engages in conduct which creates a substantial danger of physical injury to another person."

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The Sixth Circuit held that the criminal acts exclusion barred indemnity coverage for the medical malpractice action. The court reasoned that, although a criminal adjudication was normally required under Kentucky law before a criminal acts exclusion applied, a criminal adjudication was not necessary when the insured admitted all elements of the relevant criminal statute. The court found that the doctor's testimony in the underlying action constituted an effective admission of the elements of wanton endangerment because he admitted "knowing self-intoxication and the objective fact that his conduct created a substantial risk of harm to another." The court also held that the damages were "in consequence" of the criminal act because the jury's finding in the underlying action indicated that the doctor's criminal act was a substantial factor in causing the injuries.

The opinion is available here.