

Sexual Misconduct "During" Law Enforcement Activities Does Not "Arise Out of" Law Enforcement Activities

In a recent case before the U.S. District Court for the Central District of Illinois, the court held that jail employees were not entitled to coverage for sexual molestation of an inmate under the law enforcement coverage part of the jail's liability insurance policy. In so holding, the court declined to apply an expansive interpretation to the policy's "arising out of" language. See *U.S. Specialty Ins. Co. v. Rhoads*, No. 11-2217 (C.D. Ill. June 4, 2013).

The Underlying Suit

In the underlying litigation, Courtney Utterback, an inmate at the Edgar County, Ill., jail, sought recovery against jail employees. Utterback alleged that Jason R. Ball and Kent A. Rhoads engaged in sexual relations with her without her consent and provided her with unlawful drugs and alcohol, and that Ball took naked photographs of her without penological purpose. Both Ball and Rhoads were convicted of criminal conduct.

The Declaratory Judgment Suit

The jail's insurer initiated the declaratory judgment action against Utterback, Ball and Rhoads. The insurer sought a declaration that it did not have any duty to defend or indemnify under the policy's general liability coverage part, the law enforcement coverage part, or the public officials liability coverage part. On motions for summary judgment, Utterback conceded that coverage was not available under the general liability or public officials liability coverage parts.

The Court's Analysis

The coverage litigation addressed only availability of coverage under the policy's law enforcement coverage part. The policy provided that covered "wrongful acts" "must arise out of the performance of the 'insured's' 'law enforcement activities.'" The policy defined law enforcement activities to include activities conducted by the named insured's law enforcement department and approved activities declared in the application. The policy also contained a criminal acts exclusion that negated coverage for "wrongful acts" arising from the deliberate violation of any statute committed by or with the knowledge of the insured.

The insurer argued that neither engaging in sexual misconduct nor providing contraband to a prisoner qualified as wrongful acts as defined by the policy because those acts did not arise out of the performance of law enforcement activities. Utterback countered that the "arising out of" language expanded coverage to incidents that occurred while conducting law enforcement activities, including overseeing inmates.

The court ruled in favor of the insurer and found that the policy language was unambiguous. The court "conclude[d], without hesitation, that the alleged actions of Ball and Rhoads did not 'arise out of' the performance of Law Enforcement Activities, as defined by the Policy." In addition, the court held that the policy's criminal acts exclusion applied to bar coverage.

The *U.S. Specialty v. Rhoads* decision presents a favorable result for insurers assessing coverage obligations under professional liability insurance policies and reinforces the case law that limits such coverage to traditionally professional activities. The decision is noteworthy because the court rejected the broad interpretation of the arising out of language in the insuring agreement, holding that the insureds' conduct did not arise out of the performance of law enforcement activities. The court supported its conclusions by reading the policy terms together, thereby juxtaposing the arising out of requirement onto the definition of law enforcement activities. Policyholder counsel



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may attack the holding on the basis that the court applied a more expansive interpretation of this same language in the policy exclusions, holding that the underlying complaint arose out of the deliberate violation of statutes.

To discuss any questions you may have regarding the issues discussed in this Alert, or how they may apply to your particular circumstances, please contact Deborah Minkoff at 215.665.2170 or dminkoff@cozen.com or Abby Sher at 215.665.2761 or asher@cozen.com.