

Trigger of Insurance Coverage for Wrongful Conviction Lawsuits

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In the last ten years, hundreds of people have established in court that they were wrongfully convicted of crimes that they did not commit. Recent exonerees increasingly pursue civil claims for wrongful conviction, and these claims generate substantial demands directed at public entities, public officials and their liability insurers. In their article appearing in the January/February 2010 issue of *Coverage*, the authors explore how, as part of this emerging area of criminal and civil rights law, courts only recently have begun to confront the insurance implications of wrongful conviction lawsuits, particularly the question of which policy or policies may be triggered by such claims. The authors note that, because the vast majority of cases addressing whether a CGL policy is triggered arise under Coverage A for “bodily injury” claims, judicial guidance as to trigger of coverage for “personal and advertising injury” claims under Coverage B is surprisingly scarce.

With few cases addressing trigger of coverage in the context of personal and advertising injury, insureds or claimants to whom the insureds’ rights have been assigned have pushed courts to consider whether a continuous trigger applies. The article surveys and analyzes court decisions on the trigger of coverage for wrongful conviction claims, and demonstrates that, to date, courts uniformly have ruled that a continuous trigger does not apply in the wrongful conviction context. The authors explain that these decisions recognize that the trigger of coverage for such claims is, at the latest, the date of conviction, and that wrongful conviction claims do not implicate the underlying concerns that sparked the development of the continuous trigger.

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