

Benjamin Eggert Discusses Insurance Coverage Triggers for Wrongful Convictions Cases

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Benjamin C. Eggert, a partner in Wiley Rein's Insurance, Appellate and Litigation practices, was quoted in an August 7 *Business Insurance* article about liability, exposure and insurance implications for wrongful conviction lawsuits, which have prompted local governments to reexamine their liability coverage and led courts to consider the question of when insurance coverage is triggered.

According to Mr. Eggert, most courts have ruled that coverage is triggered at the inception of the criminal process, either by the arrest or indictment of an individual.

"They're trying to figure out when the person was first injured in the legal sense so usually that's when the local government formally acts against the person," he said.

In several rulings issued from 2010 to 2012, the U.S. Circuit Court of Appeals for the Seventh Circuit found that coverage was triggered at the exoneration date. But Mr. Eggert said other courts have rejected that position, most frequently citing the time of arrest or indictment as the trigger date.

In a 2016 white paper cited in the article, Mr. Eggert noted that "courts typically hold that the trigger of coverage is when the claimant was first injured, and that events taking place after the onset of injury are not relevant to the trigger analysis."

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He also pointed out that wrongful conviction suits are rarely decided by a jury, and “while there are headline-grabbing jury awards, in practice the award may be far less.”