

Coverage Not Barred for Failure to Warn of Future Danger

April 2004

The United States Court of Appeals for the Eighth Circuit, applying Missouri law, has held that a criminal acts exclusion in a professional liability policy issued to a psychologist does not preclude coverage for a lawsuit alleging that the psychologist failed to warn a child and the child's mother of the danger of continuing sexual abuse by the child's father. *Am. Home Assur. Co. v. Pope*, 360 F.3d 848 (8th Cir. 2004).

The insurer issued a professional liability policy to a psychologist, which contained an exclusion barring coverage for any "dishonest, criminal, fraudulent, or malicious act or omission." The underlying plaintiff sued the psychologist, alleging that he negligently failed to warn her and her mother of the future danger of sexual abuse by her father, who was a patient of the psychologist. The underlying plaintiff also alleged that the psychologist violated a Missouri law that makes the failure to report child abuse to state authorities a misdemeanor. The insurer filed a declaratory judgment action seeking a ruling that the criminal acts exclusion in the policy precluded coverage.

The Eight Circuit held that coverage was available. The court stated, without explanation, that the exclusion in the policy precluded coverage for the allegation that the psychologist violated Missouri law. The court determined, however, that the exclusion did not exclude coverage for the "common law duty to notify private individuals" of the risk of future harm. The court reasoned that the insurer "has not cited any Missouri statute or case law making criminal the failure to warn *the victim* of the possibility of future abuse."

For more information, please contact us at 202.719.7130.