

ALERT

Criminal Acts Exclusion Bars Coverage After Escrow Agent Pleaded Guilty to Stealing Funds from Account

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The United States District Court for the Middle District of Florida has held that a professional liability policy's criminal acts exclusion bars coverage for a claim for the return of escrow funds because the title agency's owner had pleaded guilty and admitted to fraudulently disbursing the funds from the agency's escrow account. *Max Specialty Ins. Co. v. A Clear Title & Escrow Exch., LLC*, 2013 WL 2682716 (M.D. Fla. June 12, 2013).

The insurer issued a title agents, abstractors and escrow agents professional liability policy to the agency. The agency's sole owner and manager fraudulently disbursed funds from an escrow account to unauthorized recipients and created fraudulent reports to investors regarding the balance on deposit in the account. The owner was criminally charged with conspiracy to commit wire fraud and pleaded guilty. The insurer brought a coverage action seeking a declaration that there was no coverage for civil claims against the insured by the entities and individuals who had placed money in the escrow account.

In ruling on the insurer's motion for summary judgment, the court analyzed the policy's criminal acts exclusion, which precluded coverage for claims "based on or directly or indirectly arising out of or resulting from ... any criminal, fraudulent, or dishonest act." The exclusion required the insurer to defend "such allegations" against the policyholder until "final adjudication." The court found that the agency's owner had committed a crime when he took money from the escrow account and that therefore the claim for failure to return the escrow funds clearly arose out of a criminal act. The court also

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found that the owner's guilty plea constituted a final adjudication of the allegations so as to relieve the insurer of its obligation to defend against the claim. The court rejected the claimant's argument that it had alleged only the agency's negligence and noted that the policy did not make an exception for crimes committed by principals as opposed to by the entity represented by the principal. Finally, the court also determined that the insurer had not waived this coverage defense under Section 627.426(2) of the Florida Claims Administration Statute by not defending because waiver could not create coverage for claims expressly excluded under the policy.