

“No Contest” Criminal Plea Cannot Be Used to Deny Coverage



By: Michelle J. Sheehan

When an insured pleads no contest to intentionally committing a criminal act, can the insured still seek insurance coverage for his/her actions? Approximately two weeks ago, the Ohio Supreme Court begrudgingly held “yes.”

In *Elevators Mut. Ins. Co. v. J. Patrick O’Flaherty’s, Inc.*, 2010-Ohio-1043, Richard Heyman (“Heyman”), the owner of a restaurant named O’Flaherty’s, pled no contest to criminal charges for intentionally burning down the restaurant. Heyman also filed an insurance claim for the fire damage. When the insurer denied coverage and filed a declaratory judgment action, Heyman filed a counterclaim for breach of contract, bad faith and spoliation of evidence.

The Trial Court ultimately considered Heyman’s no contest plea to arson and held coverage was excluded under the policy for “dishonest or criminal acts” by Heyman. The Court of Appeals reversed the Trial Court and held Heyman’s no contest plea was inadmissible.

The Ohio Supreme Court affirmed the Court of Appeals’ decision. The Ohio Supreme Court analyzed Criminal Rule 11 and Evidence Rule 410(A). Crim. R. 11(A) provides that a plea of no contest to criminal charges “is not an admission of Defendant’s guilt, but an admission of the truth of the facts alleged in the indictment.” Crim. R. 11(B)(2). Evid. R. 410(A)(2) similarly provides that a no contest plea “is not admissible in any civil or criminal proceeding against the Defendant who made the plea.” The reason for the rules is to encourage Defendants to plea bargain and avoid admitting guilt if a victim later sues the Defendant.

Based on the foregoing, the Ohio Supreme Court held neither the plea nor the resulting conviction was admissible in the subsequently filed coverage litigation. The Ohio Supreme Court recognized and struggled with the fact that as a result of its ruling, insureds may financially benefit from criminal actions. However, the Court noted: 1) the facts surrounding the criminal activity is still admissible, and 2) the Ohio Rules of Evidence should be changed so that a no contest plea can be used as a defense to a claim asserted by a Defendant.

Until the Ohio Rules of Evidence are changed, however, insurers will be forced to invest more time and money to prove coverage is excluded for an insured’s intentional acts. An insurer will not be able to rely upon an insured’s no contest plea in a criminal proceeding to prove the insured acted intentionally. If you would like a full copy of the opinion or have any other questions on Insurance Coverage or Bad Faith, contact any member of our Coverage Practice Group.

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