Managing Wrongful Incarceration Lawsuits

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Today's Presentation

• Factors Impacting Outcome of Wrongful Incarceration Matters
• Trigger of Coverage
• Tips to assess exposure risk and achieve success in management of claim

Factors Impacting Resolution

- Liability Defenses
- Damages
- Actual Innocence
- Local Officials
- Other Comp.
- Impact of Insurance Coverage
Liability Issues in Typical Wrongful Incarceration Matters

Substantive Basis for Exoneration
- Witness misidentification
- Unreliable forensic evidence
- False confession
- Official misconduct
- Informants

Liability Issues in Typical Wrongful Incarceration Matters
- False arrest
- False imprisonment
- Malicious prosecution
- Violation of due process
- Monell claim against entity

Actual Innocence in Typical Wrongful Incarceration Matters
- Underlying conviction has been vacated due to a procedural problem or new evidence
- Actual innocence
Local Official Roles in Typical Wrongful Incarceration Matter

- Officials involved in the earlier investigation/prosecution
- Officials not involved previously

Damages Issues in Typical Wrongful Incarceration Matters

- Settlement Outcomes & Dynamics

Other Compensation Issues in Typical Wrongful Incarceration Matters

- Statutes
- Parties
- Other Insurance
Trigger of Coverage

**By the Numbers**

- 1967: First Trigger Decision
- 67: No. of Trigger Decisions
- 19: States Addressing Trigger

**Historical Approach**

- **Mueller Fuel Oil** (N.J. Ct. App. 1967)
- **Roess** (M.D. Fla. 1974)


- **Facts**: Insured caused criminal complaint to be filed against another person, who was arrested in November 1961, indicted in May 1962, and acquitted in March 1963.
- **Issue**: Whether coverage is triggered by initiation of the criminal suit, or the termination of the criminal suit.
- **Holding**: The "essence" of malicious prosecution is "the wrongful conduct in making the criminal charge."
Trigger of Coverage

**Roess** (M.D. Fla. 1974)

- **Facts:** insured filed underlying civil suit against another person in 1967; after insured lost that suit on May 3, 1968, and appealed, the Florida Supreme Court affirmed in July 1968.
- **Issue:** whether coverage is triggered under a policy issued May 6, 1968.
- **Holding:** the termination of the civil suit was “essential element” of the claim, trigger coverage under the policy.

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**Trigger of Coverage**

**Historical Approach**

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**Trigger of Coverage**

**Modern Approach**
- Majority Rule
- Initial violation of rights
- Arrest or criminal charging

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Trigger of Coverage

- Modern Approach
- Distinctly Minority Rule
- Exoneration/termination as trigger
- Adopted by 7th Circuit
- But rejected by Illinois appellate courts

Attempted Trigger Arguments

- Concealment: not a trigger
- Ongoing duties: not a trigger
- Ongoing injuries: not a trigger
- Retrial/exoneration: not a trigger

Analysis of Claim Risk

- Get Independent Perspective
- Investigate Facts
- Assess Legal Defenses
- Jury Exercise
- Understand Your Coverage
Best Practices to Avoid Liability

How to avoid tough cases
- Municipal-level training
- Member-level training
- Pool-level training

Questions?

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