



Case Study

Criminal Acts Exclusion: Denying Coverage for Methamphetamine Cleanup

— by Jeffrey D. Eberhard

Cleaning up or repairing property that once housed an illegal methamphetamine lab can be an expensive undertaking. In *Tualatin Valley Housing Partners v. Truck Ins. Exchange*, ___ P.3d ___, 2006 WL 2742666 (Or App. Sept. 27, 2006), the Oregon Court of Appeals found that an insurer properly denied coverage for \$225,000 in clean-up costs under a criminal acts exclusion in an apartment owner's property insurance policy.

Plaintiffs were the owners of an apartment complex in Beaverton. To protect their investment, they purchased an apartment owners property insurance policy from defendants. The policy included a "criminal acts exclusion" providing that the policy did not cover damages arising from "dishonest or criminal acts by * * * anyone with an interest in the property." The exclusion applied whether the person acted "alone or in collusion with others."

After plaintiffs purchased the policy, police discovered a methamphetamine lab in one of the building's apartments. The renter denied knowledge of the drug activity. Another individual (who was not on the rental agreement) admitted that the meth lab belonged to him. Nevertheless, the DA charged both individuals with manufacture of illegal substances. The renter eventually plead no-contest to the charges. Following this discovery, the plaintiffs evicted the renter.

Plaintiffs then filed a claim under their apartment owner's policy to recover damages / clean up costs caused to the apartment by the meth lab, which the insurer denied. Plaintiffs filed suit against the insurer. The insurer moved for summary judgment, arguing there was no coverage under the criminal acts exclusion. Plaintiff opposed the motion under two theories: (1) the exclusion should not apply because the damage was not caused by persons "with an interest" in the property; and (2) even if the renter had an interest in the property, the actual damage was caused by the renter's acquaintance, who was not listed on the rental agreement. The trial court granted the insurer's motion.

On appeal, the court rejected plaintiff's first argument, noting that under the common law, a renter has an interest in the property and nothing in the insurance policy altered that analysis. The court also rejected plaintiffs' alternative argument. During the eviction proceedings (by forcible detainer), plaintiffs took the position that the renter had participated in the illegal activities as justification for the eviction. Plaintiffs were therefore stopped from later asserting that the renter did not participate in the illegal activity. The court found that under the terms of the exclusion, the degree of the renter's participation was immaterial. Summary judgment for the insurer was affirmed. ❖

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Claims Pointer: A properly worded "criminal acts exclusion" in a apartment owner's insurance policy may allow the insurer to deny coverage for damages arising from the manufacture of methamphetamines by a tenant of the apartment building.