

COA Opinion: Criminal acts exclusion bars insurance coverage for careless discharge of a firearm

1. September 2010 By Jason Byrne

On August 31, 2010, the Court of Appeals published Judge Wilder's opinion in *Auto Club Group Ins. Co. v. Booth*, No. 290430, reversing the trial court's conclusion that the insured was covered under his homeowner's policy in response to an injury claim from the victim of a negligent shooting. Here, several people were in the insured's home when the intoxicated insured retrieved his automatic handgun and, thinking that there was no round in the chamber, placed the barrel the gun against the wrist of another man whereupon the weapon discharged (the insured could not recall pulling the trigger), causing significant injuries to the other individual. The insured pled no contest to a misdemeanor charge of careless discharge of a firearm resulting in injury. The injured party filed suit against the insured, but the homeowner's insurer denied coverage citing an exclusion in the policy that barred coverage for injuries resulting from "a criminal act or omission." The Court of Appeals found that while the insured's no contest plea in the criminal case was not conclusive proof that the insured had committed a crime, the undisputed record clearly established that the insured had control over the gun, knew it had a loaded magazine, and held it against another person's wrist (all while intoxicated), was sufficient to prove the careless discharge of a firearm. Thus, the Court of Appeals reversed the trial court and found that the insurer was entitled to summary disposition.

If you would like more information on the criminal acts exclusion and, in particular, the effect of criminal pleas on the application of that exclusion, you may be interested in [this article](#). The present case is in line with the article's conclusion that a no contest plea preserves an insured's right to argue that they are entitled to coverage, but that the facts of the case may ultimately establish the applicability of the criminal acts exclusion.