

MICHAEL J. MAROTTE
ADMITTED IN NJ AND NY

DIRECT LINE: (973) 631-7848
INTERNET: MJM@SPSK.COM

December 29, 2006

INSURANCE LAW ALERT

Recent Case Law Interpreting the Expected or Intended Injury Exclusion

A coverage issue often arises in circumstances where one insured will seek coverage for a claim, the genesis of which is the alleged intentional act of another insured. The typical case involves a parent who is facing a claim for negligent supervision of a child or an employer who is facing a claim for negligent supervision of an employee where the child or employee has committed an intentional act resulting in injury or damage. Other instances may involve a claim against an insured for vicarious liability resulting from the intentional acts or conduct of another insured.

The applicability of the Expected or Intended Injury exclusion to claims asserted against one insured resulting from the intentional act of another insured has recently been addressed by the New Jersey Appellate Division in an unreported decision decided December 26, 2006. The Court found that coverage for such claims *will* be precluded by the exclusion under certain circumstances.

In *Villa v. Short, et al v. Allstate New Jersey Insurance Company, et al*, Docket No. A-0993-05T10993-05T1, third party plaintiff, John Short, sought insurance coverage for claims of negligent supervision of his mentally impaired adult son who had sexually molested plaintiff, Danielle Villa. Mr. Short sought coverage under his homeowner's policy which was provided by Allstate. The Allstate Policy contained the following exclusion:

We do not cover any bodily injury or property damage which may reasonably be expected to result from the intentional or criminal acts of **an** insured person or which are in fact intended by **an** insured person.

The Court ruled that since the molestation was an "intentional act" committed by **an** insured (the son), no coverage was available under the policy to the other insureds, including the father. This was true even though the claim against the father was for the negligent supervision of his son and the father had not committed any intentional acts.

In coming to this decision, the Appellate Division distinguished two forms of the Expected or Intended Injury exclusion; one which references the intentional act of “the” insured versus one which references the intentional act of “an” insured. The Court held,

Defendant argues that the language of the exclusion, which removes coverage from any claim arising from the intentional act of “an” insured, must mean that a claim arising from the intentional act of any insured is excluded from coverage. Since the molestation was an “intentional act” committed by John Short [the son], who was an insured, no coverage is provided under the policy to the other insureds. Plaintiff [the father] asserts that the clause is, at the least, ambiguous because a reasonable person might read “an” insured to mean “each” insured, so that coverage is excluded only as to the insured committing the intentional act.

We reject plaintiff’s position as requiring the type of distortion of the plain words of the exclusion that we are taught to avoid.... We do not see how the defendant could have written the policy more clearly to express the exclusion from coverage of any claim against any insured arising from an intentional act committed by any insured.

The Court found that the exclusion would not have precluded coverage for this claim if the exclusion had referenced the intentional act of “the insured” as opposed to the intentional act of “an insured”.

The typical CGL ISO forms, including CG 00 01 07 98 (1998 form), CG 00 01 10 01 (2001 form) and CG 00 01 12 04 (2004 form) include Expected Or Intended Injury exclusions which reference the intentional act of “the insured.” Accordingly, this form of the exclusion will not operate to preclude coverage for claims against an insured that faces liability for the intentional acts of another insured.

We hope that this information has been helpful to you. We will be happy to provide you with continuing insurance law updates. Please feel free to contact our office should you have any questions or require any further information.

Michael J. Marotte, Esq.
Co-Chair, Insurance Coverage Practice Group
Schenck, Price, Smith & King, LLP
10 Washington Street, P.O. Box 905
Morristown, New Jersey 07963-0905
Direct Dial: (973) 631-7848
Email: mjm@spsk.com