American Educational Institute, Inc.

CLAIMS LAW UPDATE

A SUPPLEMENT TO CLAIMS LAW COURSES IN CASUALTY, PROPERTY, WORKERS COMPENSATION, FRAUD INVESTIGATION AND AUTOMOBILE

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AEI CLAIMS LAW QUIZ

INTENTIONAL AND CRIMINAL ACTS EXCLUSION

[Homeowners: Liability Coverages, Para. 2.04]

FACTS: Googins and Benson got into an argument and Googins punched Benson in the face. Benson fell backwards, hit his head on the pavement, and died. In the criminal case Googins pleaded guilty to aggravated assault.

Benson's estate then sued Googins in tort. In his deposition Googins testified that although he intended to strike Benson in the face, he did not intend or expect to hurt Benson.

At the time of the incident Googins resided with his grandmother who was the named insured on a homeowner's policy issued by Metropolitan Property and Casualty. The policy defined "occurrence" as "an accident," and "you" and "your" to include a resident relative of the named insured. Googins, therefore, was an insured. The policy also included the following intentional loss exclusion:

> We do not cover bodily injury or property damage which is reasonably expected or intended by you or which is the result of your intentional and criminal acts or omissions. This exclusion is applicable even if:
>
> A. you lack the mental capacity to govern your conduct;
>
> B. such bodily injury or property damage is of a different kind or degree than reasonably expected or intended by you; or
>
> C. such bodily injury or property damage is sustained by a different person than expected or intended by you.

In exchange for the estate's promise that it would not seek to collect a judgment from Googins personally, Googins admitted that his negligence caused Benson's death, consented to a $400,000 judgment in favor of the estate, and assigned to the estate all of his rights against Metropolitan. Based on the agreement the court entered a judgment against Googins and the estate proceeded against Metropolitan to collect the judgment.

The court granted summary judgment in favor of the insurer based on the intentional and

criminal acts exclusion and the estate appealed.

QUESTION: Does the intentional and criminal acts exclusion apply when an insured committed an intentional and criminal act but did not intend the injury that resulted?

ANSWER: Yes. In *Metropolitan Property and Casualty Insurance Company v. Estate of Benson*, 128 A3d 1065 (Me. 2015), the Supreme Judicial Court of Maine held that the second clause of the intentional loss exclusion ("intentional and criminal acts or omissions") is unambiguous and applies to bar coverage based on proof of both an intentional and criminal act. Since the insured's deposition testimony proved a clear intent to strike the deceased and since the insured was convicted of a crime for his actions, the intentional loss exclusion applied.

The supreme court initially explained the fundamental rules that apply to the interpretation of an insurance contract: "An insurance contract is ambiguous if it is reasonably susceptible of different interpretations. If there is an ambiguity, a liability insurance policy must be construed so as to resolve all ambiguities in favor of coverage. On the other hand, unambiguous language in an insurance contract must be interpreted according to its plain and commonly accepted meaning."

After reviewing the policy's intentional loss exclusion the supreme court concluded that each of the exclusion's two clauses is a separate and distinct exclusion. The first clause addresses injury or damage caused by an insured's intentional acts.

- We do not cover bodily injury or property damage: which is reasonably expected or intended by you.

The second clause addresses an insured's intentional and criminal acts.

- We do not cover bodily injury or property damage: which is the result of your intentional and criminal acts or omissions.

With respect to the first exclusion, the supreme court said that it had previously interpreted similar language in *Patrons-Oxford Mutual Insurance Company v. Dodge and Mahar*, 426 A2d 888, (Me. 1981). That policy exclusion read: "This policy does not apply to bodily injury or property damage which is either expected or intended from the standpoint of the insured." The *Dodge* court held that this language is ambiguous because it doesn't clearly distinguish between the act of the insured and the injury resulting from the act. The insured may have intended to commit the act but not the resulting injury.

On the issue of whether the first part of the exclusion barred coverage, the lower court ruled against Metropolitan and held that the *Dodge* decision controlled. The supreme court, however, found that the lower court had failed to consider the additional language that states that the exclusion applies even if the "bodily injury or property damage is of a different kind or degree than reasonably expected or intended by you." Nonetheless, the supreme court held that the additional language was not an issue because Metropolitan relied solely on the second part of the exclusion on appeal.

The sole issue on appeal was the second clause of the intentional loss exclusion. The estate argued that this part of the exclusion is also ambiguous and that *Dodge* controlled this part of the exclusion as well. According to the estate, in order to enforce the second part of the exclusion the insurer, in addition to proving that the insured committed a criminal act, must also prove that the insured subjectively intended to cause the resulting harm. Because the insured denied an intent to cause death, the estate argued, the exclusion should not apply.

The supreme court rejected the estate's arguments and concluded that *Dodge* did not control the interpretation of the second part of the Metropolitan exclusion because it does not use the language "expected or intended by you." Instead, the supreme court determined that the second part of the exclusion is unambiguous and only requires proof of an intentional and criminal act. Unlike the first part of the Metropolitan exclusion, the second part does not require proof of the insured's intent to cause the ultimate harm.

The supreme court held that however the first part of the exclusion is interpreted the second part of the exclusion can bar coverage and did in this case. The insured testified in his deposition that he intended to strike Benson in the face. Likewise, the insured pleaded guilty to aggravated assault, a criminal offense. Because there was no genuine issue of material fact on the question of the applicability of the second part of the exclusion, the supreme court ruled in favor of Metropolitan.

Massachusetts has also addressed the same intentional and criminal acts exclusion and reached the same result. In *Metropolitan Property and Casualty Insurance Company v. Morrison*, 951 NE2d 662, (Mass. 2011), the Supreme Judicial Court of Massachusetts held that the exclusion applies to bar coverage even if there is only proof that the insured committed an intentional and criminal act. The exclusion does not require proof that the insured intended the harm that resulted from the intentional and criminal act.

While the Maine Supreme Court in *Benson* reached its conclusion without the need to analyze the effect of the additional language on the part of the exclusion that adresses intentional injury, it is important to note that many policies include language to the effect that the intentional injury exclusion applies even if the resulting injury "is of a different kind or degree than reasonably expected or intended." While there must still be an intended injury, if the resulting injury is worse than expected or intended by the insured the additional language, if considered unambiguous by a court, would apply to bar coverage.

Two Michigan cases illustrate this point. In *Allstate v. Dempsey*, 721 NW2d 591 (Mich. 2007), the insured punched a man who fell, hit the back of his head, and died. The court held that a person would reasonably expect an injury to result from the act of punching someone. The fact that he didn't intend for the victim to die did not affect the applicability of the exclusion. The exclusion applied even though the injury was of a different degree than was expected or intended.

In *Allstate v. McCarn*, 683 NW2d 656 (Mich. 2004), a 16-year-old pointed what he thought was an unloaded gun at his friend and pulled the trigger. The gun was, in fact, loaded and went off, killing the friend. The court held that there was no intended injury because a person would not reasonably expect injury to result from the intentional act of pulling the trigger of what he believed was an unloaded gun.