

OHIO CASE SUMMARIES

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Ohio case summaries will be provided on a continuing basis every Wednesday and Friday of each week (excluding holidays). Summaries include brief descriptions of cases decided in the past week by the Ohio Supreme Court and lower appellate courts on issues related to insurance law. To discontinue receiving this service, please call Sean McCormick at 937.224.3333 or send an email to smccormick@green-law.com.

Court of Appeals: The Ohio Supreme Court

Case Name: *Safeco Ins. Co. of Am. v. White*, 2009-Ohio-3718

Decided: August 4, 2009

Issue(s): Coverage/Derivative Claim/Negligent Supervision

Summary of Opinion: Seventeen-year-old Benjamin White attacked and stabbed thirteen-year-old Casey Hilmer as she was jogging in their neighborhood. Subsequently, the Hilmers sued Benjamin and his parents for multiple intentional tort and negligence claims.

Before trial, the Whites sought coverage from their two homeowner's and two umbrella insurance policies. Two of the companies agreed to defend them, but Safeco Insurance Company (Safeco) refused.

During the pendency of the suit, Safeco sought declaratory judgment that it had no obligation to defend or indemnify the Whites in relation to claims arising out of Benjamin's acts. The trial court consolidated the action with the Hilmers' suit. Following a verdict against the Whites, Safeco continued to argue that it was not obligated to provide coverage.

The trial court granted summary judgment to the Whites, entering a declaratory judgment that Safeco was required to defend and indemnify them. Safeco appealed, and the First District Court of Appeals affirmed, holding that the Whites' negligence constituted an "occurrence" under the Safeco policies, entitling them to coverage. It further held that a severability clause in Safeco policies was ambiguous with respect to the application of

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an exclusion for injuries caused by the intentional act of another insured, and that such an ambiguity must be read in favor of coverage under Ohio law.

The Ohio Supreme Court explained that an “occurrence” under the Safeco policies was defined as an “accident,” and that while Benjamin’s stabbing was intentional, and thus precluded from coverage, from the Whites’ perspective the entire circumstance was “accidental.” The Court reasoned that liability hinges on whether the act is intentional from the person seeking coverage, and that the expectations of the negligent insured must control the coverage determination.

The Court pointed out that many other jurisdictions have held that an “occurrence” exists if the person seeking coverage is negligent with regard to the intentional act. Further, the Court reasoned that to hold otherwise would dissolve the distinction between intentional and negligent conduct.

Next, the Court held that policy exclusions that preclude coverage for intentional/illegal acts of an insured do not preclude coverage for the negligent acts of other insureds. The Court explained that negligence torts are entirely separate and distinct claims from intentional torts, and therefore, a court must look at the injuries resulting from the negligent act separate from the intentional act. The Court reasoned that the Whites were held separately liable for their own negligence, which was neither intentional nor illegal, and which produced separate and distinct injuries.

Unlike the court of appeals, this Court did not find the policy exclusions ambiguous. It concluded that a policy exclusion will be interpreted as applying to only that which is clearly intended to be excluded, and that in this case, the clear import was that the policies precluded coverage for injuries arising from or caused by intentional or illegal acts of an insured, not negligence.

The judgment was affirmed.

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