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Delaware High Court: No Coverage for Intentional Assault; "Accident" Is Judged from Insured's Standpoint, Not Victim's

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On January 29, 2020, Delaware's highest court issued an important ruling on whether an insured's intentional assault was an "occurrence" under a homeowner's insurance policy and the application of an expected or intended exclusion, reversing a ruling below which found coverage for a policyholder's intentional assault that resulted in the claimant's death. *USAA v. Carr*, No. 273,2019 (Del. Jan. 29, 2020). The ruling is significant because hundreds of cases involving assault, sexual misconduct, and other intentional conduct by insureds, in both the personal and commercial contexts, pose similar questions about coverage for harm resulting from intentional conduct.

In *USAA v. Carr*, the Delaware Supreme Court refused to disregard the ordinary, everyday meaning of "accident" to find coverage for an intentional assault. In so doing, the court expressly held that whether an incident is an "accident" must be determined from the viewpoint of the insured under Delaware law, overruling two lower court decisions to the contrary and distinguishing a prior ruling of its own. The court thus rejected the idea that the victim's viewpoint could determine whether there was an accident. The court also upheld and applied an exclusion for intended injuries "even if the resulting injury . . . is of a different, kind, quality[,] or degree."

In April 2016, the insured, Trinity Carr, intentionally assaulted her classmate Amy Joyner-Francis in the bathroom of their Wilmington high school. During the attack, Joyner-Francis suffered from heart failure and died. An autopsy later revealed that Joyner-Francis had suffered from an unknown heart defect which, along with the emotional and physical stress from the fight, caused her death. Following Carr's criminal prosecution, Joyner-Francis' parents filed two civil lawsuits against Carr and others concerning their daughter's death. Carr sought a defense and indemnification under her mother's homeowner's policy. The insurer filed a declaratory judgment action in state court and moved for summary judgment on the basis that the incident at issue was not an "accident," and therefore not a covered "occurrence" under the policy. The insurer further argued that coverage was barred by the policy's expected or intended exclusion.

The insurance policy provided for defense and indemnification of claims against an insured "for damages because of bodily injury … caused by an 'occurrence.'" It defined "occurrence" as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions, which results … in … bodily injury." In determining the meaning of the word "accident," the court stated that the central questions were "what must be unforeseeable?" and "to whom?"

The court held that the policy's coverage clause provided that the bodily injury—here, Joyner-Francis's death—must be caused by an accident, not that the nature or extent of the injury itself must be an accident. And it further held that whether an incident is an "accident" in the context of homeowners' insurance policies must be determined from the viewpoint of the insured. Here, from the insured's perspective the fight that caused Joyner-Francis's death was not an accident. The policy therefore did not provide coverage to the insured.

The court then held that coverage also was barred by the policy's "expected or intended" exclusion, which expressly excluded from coverage bodily injury "which is reasonably expected or intended by an insured even if the resulting bodily injury … is of a different kind, quality [,] or degree than initially expected or intended." The court rejected the lower court's finding that the exclusion was ambiguous, explaining that for ambiguity to exist, there must be at least two different *reasonable* interpretations of the text in question. An interpretation that renders a clause "entirely inoperative" is not a reasonable interpretation. Here, the court held, the intent of the exclusion clause was clearly to exclude coverage where the insured intended to cause bodily injury, even if the resulting injury was more or less serious or of a different kind than intended—precisely the situation at issue. The court had no trouble finding that Carr intended to cause bodily injury based on evidence that Carr had slammed the victim to the ground, yanked her hair and struck her before again pulling her hair. That intention alone triggered the exclusion clause, the court reasoned, noting that it was irrelevant whether the victim's death was expected or intended.

The Delaware Supreme Court's decision is an important ruling enforcing coverage limitations in the policy's "occurrence" requirement and expected or intended exclusion. There are many settings where purposeful misconduct can lead to liability, notably for sexual misconduct, which has spurred hundreds of lawsuits in the past year to address assaults undertaken with the knowledge they would harm others. As another court cautioned, if a court were to accept the argument that the meaning of "accident" should be based on whether the injury-causing event was expected, foreseen, or designed by the injured party, "then intentional acts that by no stretch could be considered accidental nevertheless would fall within the policy's coverage of an 'accident.' Under [that] reasoning, even child molestation could be considered an 'accident' within the policy's coverage, because presumably the child neither expected nor intended the molestation to occur." *Delgado v. Interinsurance Exch. of Automobile Club of Southern California*, 211 P.3d 1083, 1087 (Cal. 2009) (rejecting victim-perspective approach). *See also Schinner v. Gundrum*, 833 NW2d 685 (Wis. 2013) (same).

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