

## USAA's Win In Assault Case Curbs 'Intentional Acts' Coverage

By **Jeff Sistrunk**

*Law360 (February 4, 2020, 6:50 PM EST)* -- Delaware's high court recently ruled that USAA doesn't have to cover a young woman's costs to defend litigation over her fatal beating of a classmate while in high school, a decision that will make it difficult for policyholders to obtain coverage for assault and other "intentional acts" — even in situations where they didn't anticipate the extent of a victim's injuries.

In a Jan. 29 opinion, the Delaware Supreme Court held that Trinity Carr isn't entitled to coverage under a USAA homeowners policy for her defense of two civil suits over the death of classmate Amy Joyner-Francis following a 2016 beating by Carr and another girl in a bathroom at Wilmington's Howard High School of Technology. Court filings indicated that Joyner-Francis' death was attributed to a combination of a previously unknown heart problem and the "physical and emotional stress" of the attack.

In overturning a trial court's judgment, the Delaware justices said the core question of whether the death resulted from a covered accident under the USAA policy must be viewed solely from Carr's perspective, not the victim's. Here, while Carr didn't expect her attack on Joyner-Francis would be fatal, she nonetheless intended to inflict some degree of harm, the state high court found.

"To label an intentional assault, as the parties agree occurred here, an accident is to disregard the ordinary, everyday meaning of 'accident,'" Justice Gary Traynor wrote.

Attorneys who represent insurers told Law360 the Delaware high court reached a logical result that will deter policyholders from deliberately engaging in a range of actions that are designed to cause injury. Crowell & Moring LLP partner Laura Foggan said a contrary decision finding coverage for an insured's premeditated attack would have created "a moral hazard by transferring the risk of loss for liability resulting from intentional assault to an insurance company."

"Allowing coverage in that situation would take away an important incentive for the insured to avoid the undesirable conduct," said Foggan, who sits on the board of regents for the American College of Coverage Counsel, an organization of insurance attorneys. "Purchasers of liability insurance understand this; they do not reasonably expect to obtain coverage for intentional acts which they know will cause harm."

However, Hunton Andrews Kurth LLP partner Syed Ahmad, who represents policyholders, said the Delaware Supreme Court's ruling is overly broad and could enable insurance companies to deny

coverage for insureds who face accusations of intentional wrongdoing, even before all the facts come to light.

“Barring coverage when the insured has been accused of misconduct would turn liability insurance upside down and eviscerate coverage in the scenario when liability insurance should most likely come into play when the insured has allegedly done something wrong,” Ahmad said.

The April 2016 attack on Joyner-Francis yielded a host of legal troubles for Carr, who was 16 when it happened. In 2017, a family court judge found her guilty of criminally negligent homicide and conspiracy in connection with Joyner-Francis’ death. But the Delaware high court overturned the conviction on the homicide count in March 2018 after determining that Carr could not have foreseen that the attack would cause Joyner-Francis’ death.

Following Carr’s criminal prosecution, Joyner-Francis’ parents filed a pair of civil suits over their daughter’s death, naming the New Castle County Vocational Technical School District, Carr and others as defendants. Carr sought coverage under her mother’s homeowners policy with USAA, but the insurer refused and then filed the current suit in Delaware Superior Court, seeking a ruling backing its position.

Last June, Judge Noel Eason Primos ruled that USAA had a duty to defend Carr because the circumstances leading to Joyner-Francis’ death qualified as an accidental occurrence, a requirement for triggering coverage under the policy.

The judge agreed with Carr that the incident was accidental from Joyner-Francis’ perspective, because she didn’t expect to be assaulted and die in the bathroom. He relied heavily on two prior Delaware Superior Court rulings from the 1990s, known as Hackendorn and Camac, that held that the question of whether an event is an accident must be viewed from the victim’s standpoint.

The Delaware Supreme Court, however, rejected the reasoning of Hackendorn and Camac. The justices said Carr’s assertion that the result of the attack — Joyner-Francis’ death — was not reasonably foreseeable does not matter, because Carr indisputably sought to harm her classmate.

Justice Traynor wrote that ruling an intentional assault an accident would “subvert the well-established common law principle that an insured should not be allowed to profit, by way of indemnity, from the consequences of his own wrongdoing’ in a context where no announced Delaware public policy applies.”

The Delaware high court further determined that, even if the fatal attack could be characterized as an accident, coverage would separately be barred by an exclusion in USAA’s policy for intentional torts.

Clark & Fox partner Michael Savett, who represents insurers, told Law360 that the Delaware Supreme Court created a straightforward, workable standard when it ruled that the state’s courts must analyze whether an incident was accidental from the standpoint of the insured rather than the injured victim. In a majority of cases, he said, victims are “not going to foresee getting struck by a bullet or being hit by a punch at a bar,” so it “makes no sense to analyze whether there is an occurrence from the standpoint of the victim.”

“The classic law school example is a situation where an individual has the intent to shoot a particular person but mistakenly shoots another. The fact that the shooter didn’t hit his intended target does not render the act an accident,” Savett said. “Insurance companies would never willingly underwrite coverage for this type of incident.”

But Ahmad of Hunton said the case presents a good example of the adage “bad facts make bad law,” noting that the parties agreed that Carr had perpetrated an intentional attack on Joyner-Francis. While the “tension between an assault and an accident is understandable,” the Delaware justices went further by questioning key principles of insurance coverage and effectively inserting extra language into USAA’s policy, he said.

“The court recognized that the policy did not address how one determines if there is an ‘accident’ — meaning whether the inquiry is from the perspective of the insured or the victim,” Ahmad said. “The absence of policy language about that critical issue should have supported finding coverage here. After all, there are liability policies that address the intent requirement expressly from the standpoint of the insured.”

Ahmad added that, at this point, it is too early to tell if the Delaware Supreme Court’s analysis will “carry the day” in similar cases litigated in the state in the future, or if courts may find the facts of other cases distinguishable. For example, he said, it is unclear whether the high court’s reasoning would apply to a suit against a bar owner over the allegedly negligent hiring and supervision of a bartender or security guard who is involved in a fight on the premises.

“The hiring of the employee would typically be considered intentional, not an accident. Likewise, decisions around supervision — how much training is provided, staff levels, etc. — would rarely be deemed accidental,” he said. “But under the court’s rationale, there may be no coverage for these claims merely because from the bar owner’s perspective, those decisions were not accidental even though the liability claim is expressly based on negligence.”

Crowell & Moring's Foggan said the Delaware high court's core holding appears to be broad enough to apply to negligent hiring claims, if, from the employer's perspective, it was foreseeable that an employee would injure someone. That may be the case if, for example, a business hires an individual who has a history of violent or abusive behavior.

"Under the tests set out in Carr, the straightforward application of the facts could preclude coverage in a case against an employer as well as an individual employee who caused the harm," she said.

Given the recent uptick in litigation regarding coverage for sexual molestation claims, Foggan said the Delaware justices’ decision provided “welcome clarification” on how to interpret the standard accident language found in many policies. At bottom, the ruling serves an important public policy purpose by preventing policyholders who commit intentional torts from being able to foist the costs of that conduct onto others through risk-sharing via insurance, she said.

“Finding coverage for liability arising from intentional misconduct would reward behavior the public wishes to prevent, increase the cost of insurance for all policyholders, and disrupt the insurance system by disregarding clear limits on what insurance contracts insure,” Foggan said.

--Editing by Aaron Pelc and Emily Kokoll.