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Insurance Coverage ALERT

Insured's Intentional Conduct Resulting in Unexpected Injury Is Not an Occurrence

July 24, 2013

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The Wisconsin Supreme Court has refined the interpretation of "occurrence," holding that a series of intentional acts resulting in an unexpected and unintended injury is not an accident within the scope of the insuring agreement in a liability policy. See *Marshall Schinner v. Michael Gundrum and West Bend Insurance Company*, 2013 WI 71.

The insured hosted an underage drinking party at a shed owned by a family business. One of insured's many guests assaulted and seriously injured another guest. The insured knew that the perpetrator had a tendency to become belligerent when intoxicated, but permitted him to drink anyway. The victim sued the insured for negligence in failing to control his guest and for a statutory violation of serving alcohol to minors.

The insurer disputed coverage on the grounds that the insured's actions as a party host were intentional; thus, there was no "occurrence" under the family's homeowner's policy. The Wisconsin Supreme Court agreed.

The policy defined the term "occurrence" as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions." In analyzing whether there was an "occurrence" under the facts, the Supreme Court held that when an insured is seeking coverage, the determination of whether an injury is accidental under a liability policy should be viewed from the standpoint of the insured. Significantly, the Court held that to determine that the harm was not an accident, it was not necessary to find that the insured intended the harm, or even knew with substantial certainty that harm would occur. Instead, to assess the existence of an accident, one must focus on the "means or cause" of harm to determine whether it was truly accidental, even if the result was unexpected.

After reviewing the evidence, the Court observed that the insured took a number of intentional actions that were a "substantial factor" in causing the victim's injuries: the insured hosted the party; actively promoted heavy drinking; procured alcohol for the perpetrator and other minors; knew that the perpetrator was an underage individual who became belligerent when intoxicated; and encouraged, advised and assisted the perpetrator in his consumption of alcohol. The insured's actions were entirely volitional. He did not host the underage drinking party by mistake, against his will or by chance. The facts established that intent, volition, knowledge and foreseeability were all present. Consequently, the insured's conduct was not accidental. There was no "occurrence" triggering coverage under the homeowner's policy.

The Court also observed that public policy weighed against finding an “occurrence” under the facts presented. It is against public policy for an insurance contract to provide coverage for an insured’s intentional or willful misconduct. Finding an “occurrence” under the facts presented would allow the host to escape responsibility for his intentional and illegal actions and would send the wrong message about underage drinking parties. The court did not believe that a reasonable insured would expect coverage for bodily injury resulting from his hosting of a large, illegal underage drinking party.

Finally, the Court noted that even assuming there was a covered “occurrence,” coverage was excluded because the injury arose out of the use of an isolated shed on uninsured premises.

Practice Note

The decision, by focusing on the intentional conduct of the insured as opposed to the unexpected result in defining an “occurrence” represents a departure from prior case law which held that intentional acts constitute an “occurrence” if the injury is unexpected or unintended. The impact of the decision could be far reaching because many accidents are the result of a series of intentional acts gone awry. For example, an insured stops at the local watering hole and has a few too many drinks before leaving. Because he is late for dinner, he drives too fast. Due to his alcohol impairment and speed, he is unable to stop before striking another vehicle which had slowed down ahead of him. Although the result may have been unexpected and unintended, the cause was a series of intentional acts by the insured. Whether courts will extend the *Gundrum* analysis beyond the aggravated facts of that case to this more traditional setting will certainly be the focus of coverage litigation in the future.
