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ILLINOIS LAW MANUAL

CHAPTER XII EXCLUSIONS TO COVERAGE

B. INTENTIONAL ACT EXCLUSION

A homeowners policy generally excludes coverage for bodily injury or property damage which is either expected or intended by an insured. The policy states:

1. Coverage L and Coverage M do not apply to:
 - a. Bodily injury or property damage:
 - (1) which is either expected or intended by an insured; or
 - (2) to any person or property which is the result of willful and malicious acts of an insured.

The general rules relating to the interpretation of insurance policy exclusions are well established. Ambiguous provisions will be construed most strongly against the insurer, and liberally in favor of the insured. The test is not what the insurer intended by the policy language, but what a reasonable person in the position of the insured would understand the policy language to mean. Bishop v. Crowther, 101 Ill. App. 3d 933, 940-41 (1981). However, if the policy provisions are clear and unambiguous, they will be applied as written. United States First Insurance Company v. Schnackenberg, 88 Ill. 2d 1, 4-5 (1981). The words of the policy are given their plain and ordinary meaning, and the court is admonished not to search for an ambiguity where there is none. Id.

When faced with allegations of intentional misconduct, Illinois courts now allow a criminal conviction to act as conclusive evidence of intent to injure on the part of the insured. American Family Mut. Ins. Co. v. Savickas, 193 Ill. 2d 378 (2000). In Savickas, the Illinois Supreme Court held that, where an insured has been convicted of

a crime and then later sued in a civil action arising from the insured's criminal conduct, an insurer may rely on the criminal conviction to deny coverage for the civil action under the "expected or intended" exclusion. Id. at 385. The court reasoned that, because criminal proceedings provide greater safeguards to an insured than civil proceedings, the doctrine of collateral estoppel should apply to preclude an insured from re-litigating the issue of whether his actions were expected or intended in a civil action when that issue was previously determined in a criminal proceeding. Id. Significantly, the insured in Savickas was convicted in a jury trial.

It is unclear whether the rule of Savickas would extend to instances where the insured entered a "guilty" plea. A certified copy of a criminal conviction, without an accompanying jury verdict, was not sufficient for an insurer to prove that the issue decided in a criminal case was identical to the issue presented in the civil case. Such a showing is necessary to bar coverage under Savickas. Allstate Ins. Co. v. Kovar, 363 Ill.App.3d 493 (2006).

Absent a criminal conviction, the various factors courts consider when determining whether an act is "expected or intended" from the standpoint of an insured are set forth in Allstate Ins. Co. v. Carioto, 194 Ill. App. 3d 767 (1990). The factors which the court will consider in determining whether conduct is either "expected or intended" are:

- (1) there must be specific intent to do damage or cause injury;

- (2) the injury must be a natural consequence of the individual's action, resulting in foreseeable damage or injury (or at least reasonably probable injury); and
- (3) the tortfeasor must have the mental capacity to possess specific intent. Id.

Where damages are accomplished by a plan, the courts have labeled the actions as intentional. On the other hand, when damages are not necessarily planned but are of such a nature as should have been reasonably anticipated, the courts have held that they are “expected” by the insured and, therefore, excluded from coverage. Shelter Ins. Co. v. Smith, 133 Ill. App. 3d 635 (1985); Bay State Ins. Co. v. Wilson, 96 Ill. 2d 487 (1983); Farmers Auto. Ins. Assoc. v. Medina, 29 Ill. App. 3d 224 (1975).

The specific “intent” necessary for application of the policy exclusion is that the tort defendant intended to injure a particular victim, rather than whether the particular injury was intended. Mid-America Fire & Marine Ins. Co. v. Smith, 109 Ill. App. 3d 1121, 1123 (1982). “Intent” for purposes of the exclusion is distinct from the general intent required for purposes of tort liability. Allstate Ins.

Co. v. Carioto, 194 Ill. App. 3d at 778-779. A factual determination of intoxication sufficient to preclude the insured from realizing the probable results of his actions may bar application of this exclusion. Id. Whether or not the damages are reasonably anticipated or expected is determined by a subjective rather than an objective standard. Aetna Casualty & Surety Co. v. Fryer, 89 Ill. App. 3d 617 (1980); Aetna Casualty Co. v. Dichtl, 78 Ill. App. 3d 970 (1980).

A greater degree of proof is required to establish intent than to establish “expectation.” It has been recognized in Illinois that a hard blow to the face constitutes an “expected” injury within the exclusion. Shook v. Tinney, 122 Ill. App. 3d 741, 746-47 (1984). However, the trend of the courts is to find coverage for the insured when intentional acts are alleged, even in the face of allegations of punitive damages. Nandorf, Inc. v. CNA Ins. Co., 134 Ill. App. 3d 134 (1985).

Similarly, an exclusion barring coverage for “fraudulent, criminal or malicious acts” in an errors and omissions policy will bar coverage for allegations of fraud, conspiracy to commit fraud, or any other acts set forth in that exclusion. Twin City Five Ins. Co. v. Somer, 342 Ill. App. 3d 424, 794 N.E.2d 958 (2003).

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