Court Finds Coverage for Intentional Acts of "An Insured" Under Severability Clause

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The Ninth Circuit Court of Appeals recently asked the California Supreme Court to settle a previously unresolved issue: Where a liability policy covering multiple insureds contains a severability clause, does an exclusion barring coverage for injuries arising out of the intentional acts of "an insured" bar coverage for claims that one insured negligently failed to prevent the intentional acts of another insured? Today, the California Supreme Court held that it does not.

In *Minkler v. Safeco Insurance Company of America*, opinion no. S174016, plaintiff Scott Minkler sued defendants David Schwartz and his mother Betty Schwartz, alleging, among other things, that David molested Scott at Betty's home, and as a result of Betty's negligent supervision. Betty was the named insured under a series of homeowners policies issued by Safeco. David was an additional insured. The policies' liability coverage provisions promised to defend and indemnify "an" insured for personal injury or property damage arising from a covered occurrence. The policies excluded coverage for injury that was "expected or intended" by "an" insured, or was the foreseeable result of "an" insured's intentional act. The policies also contained a severability clause, providing that "[t]his insurance applies separately to each insured."

Under California law, the general rule is that in a policy with multiple insureds, exclusions from coverage described with reference to the acts of "an" or "any" insured, as opposed to "the" insured, are deemed to apply collectively. Thus, if one insured has committed acts for which coverage is excluded, the exclusion applies to all insureds with respect to the same occurrence.

In *Minkler*, the California Supreme Court was asked to determine the effect that a severability clause has upon the general rule. The court concluded that "an exclusion of coverage for the intentional acts of 'an insured,' read in conjunction with a severability or 'separate' insurance clause . . . created an ambiguity which must be construed in favor of coverage that a lay policyholder would reasonably expect."

The practical effect of the decision will be to broaden coverage under homeowners' policies, including claims that were previously thought to be uncovered. Significantly, the California Supreme Court suggested that this result could be avoided in the future by modifying the severability clause to state that "the limits of liability of this policy apply separately to each insured."

If you have a liability claim involving sexual molestation or other uncovered intentional acts, we strongly recommend that you review the policy's standard severability clause to determine what steps, if any, should be taken in light of the *Minkler* decision.