No. 33861 – *American Modern Home Insurance Company v. Jeff Corra, et al.*

Starcher, J., dissenting:

FILED
December 30, 2008
released at 10:00 a.m.
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

I dissent because the majority opinion has injected its own standards of morality into the interpretation of an insurance contract. The majority opinion decides that because the policyholder did something reprehensible – allowed alcohol to be served to minors in his house – then we should have little sympathy for the policyholder.

But the simple fact is that the "occurrence" policy language like that in the instant case has only one crystal clear meaning: a policyholder may be denied coverage only if the policyholder (1) committed an intentional act *and* (2) expected or intended the specific resulting damage. And that simply didn't happen in this case.

In the instant case, the question to ask is whether the automobile accident at issue in this case was deliberate or intentional from Jeff Corra's perspective. Obviously, it was not, and there should therefore be coverage in the instant case. As leading authorities have repeatedly stated, language like that in the policy at issue

> . . . does not exclude liability for unintentional or unexpected injury. The mere act of doing an intentional act by the insured does not relieve the insurer where the resultant injuries were unintended.

"Coverage or exclusion of intentional injuries," 43 Am.Jur.2d § 708 (1982). *See also*, *Tackett v. American Motorists Ins. Co.*, 213 W.Va. 524, 535, 584 S.E.2d 158, 169 (2003) (Starcher, C.J., concurring, in part, and dissenting, in part). Stated in a different way:

> When faced with whether there is coverage for allegedly "intentional" actions, most courts do not look at whether the *act* was intentional, but focus more on whether the policyholder expected or intended the *result*. Courts look at the subjective intent of the policyholder, because the policy language specifically says to determine if the loss was "expected or intended from the standpoint of *the insured*." Accordingly, courts should not look at a case with an "objective" standard in mind – whether the resulting injury or damage was reasonably foreseeable to a reasonable person is irrelevant. The question to ask is, "Did this policyholder expect or intend the injury or property damage?"

State ex rel. Davidson v. Hoke, 207 W.Va. 332, 339, 532 S.E.2d 50, 57 (2000) (*per curiam*) (Starcher, J., concurring). This interpretation of the word "occurrence" in a homeowner's insurance policy is

> . . . consistent with the purpose of insurance, which is to protect the policyholder against foreseeable, but unintended, injury resulting from the policyholder's negligence. The policyholder may have intended to run the stop sign but did not intend to rear-end the car ahead.

E. Anderson, 1 *Insurance Coverage Litigation* 398 (1997).

In this case, I question whether the facts even support a holding that Mr. Corra intentionally served alcohol to the minors in his house; more likely, Mr. Corra turned a blind eye to the stupidity of his children and their friends in allowing them to rummage through the refrigerator and liquor cabinet, and allow their friends to bring booze into the house.

With such horrible facts, Mr. Corra did the right thing when he entered a guilty plea to four counts of "knowingly" providing alcohol to minors. Still, "knowingly" allowing teenagers to drink is not the same thing as intentionally getting them drunk and shooing them out the door – and I see nothing in the record to even suggest that Mr. Corra intended the result of his "knowing" actions, that is, nothing showing he expected or intended for those teenagers to be involved in a collision that resulted in the death of two teenagers and the serious injury of a third.

Bad facts make bad law, and the majority opinion's disdain for underage drinking (which I personally share) has resulted in a bad opinion. Mr. Corra bought and paid for homeowner's liability insurance to protect himself, and to protect others, when his carelessness causes injury to those others. He was certainly careless, and the victims of his carelessness should not suffer more by being denied any compensation. Mr. Corra did not intentionally serve alcohol to his children's friends intending for them to drive off the side of the road to get maimed and killed. Under well established law, the insurance policy should have been interpreted as providing coverage in this case.

I therefore respectfully dissent.