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CASE ALERT June 11, 2008

SUPREME COURT APPLIES INTENTIONAL ACT EXCLUSION TO ALL INSUREDS

Last week the New Jersey Supreme Court published a significant ruling regarding the right of a liability carrier to disclaim coverage to all insureds based on the intentional act of any insured.

In Villa v. Short, the Court concluded that language in a homeowner's policy which excludes coverage for the "intentional or criminal acts of an insured person" operates to exclude coverage for all insureds – not merely the insured who committed the intentional or criminal act.

Villa involved allegations by a minor that she was sexually assaulted on numerous occasions by her mentally disabled uncle, who lived with his parents (her grandparents). She filed suit not only against the uncle, but also against the grandparents for failing to protect her from his dangerous propensities.

The Allstate policies in question excluded coverage for "intentional or criminal acts of an insured person." The Supreme Court, in concluding that the exclusion was unambiguous, ruled that the phrase "an insured" is synonymous with the phrase "any insured".

The Court found no duty on the part of the carrier to defend any insured party for claims arising out of the intentional acts of the insured assailant. Specifically, Allstate had no duty to defend either the party committing the intentional act or the insured grandparents against whom the minor plaintiff had asserted a claim of negligent supervision.

Villa strikes a blow for common sense and respect for plain language in the construction of insurance policies. We are hopeful that the Court's approach to Villa will inform its response to the appeal recently filed in Livsey v. Mercury Insurance Group, in which Methfessel & Werbel has filed a motion for leave to intervene as *amicus curiae* on behalf of the Insurance Council of New Jersey, the American Insurance Association, Property Casualty Insurers of America and the National Association of Mutual Insurance Companies.

While Livsey addresses uninsured motorist coverage, it presents the same temptation to the Supreme Court as did Villa: an opportunity to find an ambiguity or otherwise circumvent plain policy language in the interest of compensating a blameless victim. We have consistently argued that the insurance industry is best able to protect policyholders and plaintiffs alike when courts enforce policies as written and leave to the Legislature any effort to curtail the right of a carrier to disclaim coverage for clearly defined losses.

Our motion for leave to intervene in Livsey is pending; we will keep you posted. In the meantime, any questions about the applicability of Villa to a pending claim should be addressed to Matt Werbel, Eric Harrison or any of our partners. Best wishes for a happy and healthy Summer!