

# Ohio Supreme Court Allows Coverage for Negligent Supervision Claims Related to Intentional Acts



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Injuries arising from intentional acts often spawn claims of negligent supervision, training, retention, and/or entrustment brought against parties other than the intentional wrongdoer. On August 4, 2009, the Ohio Supreme Court in *Safeco Ins. Co. of Am. v. White*, 2009-Ohio-3178, issued a significant decision addressing whether such negligent acts are "occurrences" under liability insurance policies and, if so, whether intentional-act exclusions bar insurance coverage for such claims. The full Court held that when a liability insurance policy defines an "occurrence" as an "accident," a negligent act committed by an insured that is predicated on an intentional tort by another (e.g., negligent hiring) qualifies as an "occurrence." A majority of the Court also held that policy exclusions that preclude coverage for the intentional acts do not preclude coverage for related negligent acts of other insureds.

Benjamin White, a minor, attacked and repeatedly stabbed Casey Hilmer, another minor, while she was jogging in their neighborhood. Benjamin, who lived with his parents, pleaded guilty to attempted murder and felonious assault of Casey. After Benjamin was convicted, Casey's parents, the Hilmers, sued Benjamin and his parents, the Whites, asserting multiple claims, including a claim of battery against Benjamin and claims of negligent supervision, negligent entrustment, and negligent infliction of emotional distress against the Whites.

The civil jury found that Benjamin committed battery, an intentional tort, and that his acts caused Casey's father to suffer emotional distress. The jury also found that the Whites were negligent in their supervision of Benjamin, and that this negligence also injured Casey Hilmer, causing her father to suffer emotional distress. The Hilmers were awarded \$6.5 million in compensatory damages, with Benjamin being found 30% responsible and the Whites 70% responsible.

At the time of the attack, the Whites had a homeowner's policy and an umbrella policy with Safeco Insurance Company of America. During the pendency of the suit against Benjamin and his parents, Safeco filed an action seeking a declaratory judgment that it had no obligation to defend or indemnify the Whites. The trial court granted summary judgment in favor of the Whites.

The First District Court of Appeals affirmed coverage, holding that the Whites' negligence constituted an "occurrence" under the Safeco policies, even though it related "to the failure to prevent intentional conduct." The appellate court further held that a severability clause in the Safeco policies created an ambiguity with respect to the policies' intentional-acts exclusions, and that because of this ambiguity the policies must be read in favor of coverage.

The Ohio Supreme Court first determined that liability insurance coverage hinges on whether the act in question is intentional from the perspective of the person seeking coverage. Accordingly, the Court held that a negligent act committed by an insured that is predicated on an intentional tort by another person, qualifies as an "occurrence" under liability policies, such as the Safeco policies, that define "occurrence" as an "accident."

The Supreme Court also addressed whether the intentional-act exclusions in Safeco's policies precluded coverage. The policies exclude an injury "which is expected or intended by [an or any] insured . . . ." Although the exclusions in the two policies are worded slightly differently ("an" vs. "any"), the policies clearly intend to preclude coverage for injuries arising from an insured's intentional acts.

A majority of the Court reasoned that torts like negligent supervision, hiring, retention, and entrustment are separate and distinct from the related intentional torts committed by other parties. Therefore, the intentional-act policy exclusions, do not apply to the negligence claims against the Whites. Because the majority found the exclusions to be inapplicable in this case, they did not address any potential ambiguities in the exclusions.

Although three justices differed with the majority on the exclusions issue, the majority's ruling is controlling. Now in Ohio "insurance-policy exclusions that preclude coverage for injuries expected or intended by an insured, or injuries arising out of or caused by an insured's intentional . . . acts, do not preclude coverage for the negligent actions of other insureds under the same policy that are predicated on the commission of those intentional . . . acts, e.g., negligent hiring or negligent supervision."

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