

West Virginia Supreme Court Holds That Intentional Acts Exclusion Bars Coverage For Innocent Co-Insureds, Notwithstanding Severability Clause

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The West Virginia Supreme Court ruled that intentional acts exclusions in homeowners' policies bar coverage for negligence claims against co-insureds, notwithstanding severability clauses. *Am. Nat'l Prop. & Cas. Co. v. Clendenen*, 2016 WL 6833123 (W. Va. Nov. 17, 2016).

Two teenage girls were convicted of murdering a fellow student. The deceased's family sued the girls' parents for negligent supervision, among other things. Each family sought coverage under a homeowner's policy. The insurers argued that coverage was barred by an intentional acts exclusion. The homeowners claimed that the exclusions did not apply to them, as innocent co-insureds, because severability clauses require coverage to be applied separately to each insured. A West Virginia federal district certified the following two questions to the state supreme court:

1. Applying West Virginia public policy and rules of contract construction, do the unambiguous exclusions in American National's policy for bodily injury or property damage "which is expected or intended by any insured even if the actual injury of damage is different than expected or intended," and "arising out of any criminal act committed by or at the direction of any insured," and the unambiguous exclusion in Eire's policy for "bodily injury, property damage, or personal injury expected or intended by 'anyone we protect' . . .," preclude liability coverage for insured who did not commit any intentional or criminal act?
2. If so, do the unambiguous severability clauses in the insurance policies, which state that the insurance applies separately to each insured, prevail over the exclusions and require the insurers to apply the exclusions separately to each insured, despite the intentional and criminal actions of co-insureds?

The West Virginia Supreme Court answered "yes" to first question and "no" to the second. It reasoned that the plain language of the exclusions bar coverage for intentional acts committed by "any insured" or "anyone . . . protect[ed]." Rejecting the policyholders' public policy arguments, the court noted that a majority of jurisdictions have applied similar exclusions to preclude coverage to an insured based on the intentional or criminal acts of a co-insured. The court also ruled that the severability clauses have no bearing on the exclusionary language and do not render the exclusions ambiguous, contrary to a ruling of the California Supreme Court. See *Minkler v. Safeco Ins. Co. of Am.*, 232 P.3d 612 (Cal. 2010) (discussed in our [July/August 2010 Alert](#)).

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