

Wisconsin Supreme Court Rules That Reckless Homicide Conviction Does Not Eliminate Possibility Of “Accident” For Insurance Coverage Purposes (Insurance Law Alert)

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Holding

The Wisconsin Supreme Court ruled that a reckless homicide conviction, which entails the actor’s awareness of a risk of harm, does not necessarily preclude a finding of an “accident” for insurance coverage purposes. *Dostal v. Strand*, 2023 Wisc. LEXIS 7 (Wis. Jan. 26, 2023).

Background

Strand was convicted of reckless homicide following the death of his infant daughter. Thereafter, the infant’s mother brought a negligence and wrongful death action against Strand. Strand tendered the suit to State Farm, which denied coverage. State Farm argued that the reckless homicide conviction, which required a finding that “Strand created an unreasonable and substantial risk of death or great bodily harm and that he was aware of that risk,” precluded a finding that the events gave rise to a covered accident. Alternatively, State Farm argued that coverage was barred by an intentional acts exclusion. The trial court granted State Farm’s summary judgment motion and the intermediate appellate court affirmed.

Decision

The Wisconsin Supreme Court reversed. Addressing this matter of first impression under Wisconsin law, the court held that the criminal conviction did not have preclusive effect as to the coverage question. The court emphasized that the focus in the accident inquiry for insurance coverage purposes is not whether the actor intended his actions, but whether he intended the results. The court stated: “A person may engage in behavior that involves a calculated risk *without expecting*—no less reasonably—that an accident will occur. Such behavior, which may be reckless for criminal responsibility purposes, does not necessarily mean that the actor reasonably expected the accident to result.” (emphasis in original).

Further, the court noted that the jury addressed only the issue of criminal guilt and did not make a determination as to what factual events

actually occurred. Based on the disputed versions of facts in the criminal case, the jury’s conviction could have been based on a series of discrete events, some of which may be deemed accidental, the court explained.

Finally, the court ruled that issues of fact existed as to whether the intentional acts exclusion applied. The exclusion barred coverage for bodily injury that is either expected or intended by the insured. The court acknowledged that while intent may be inferred where the conduct is intentional and “substantially certain to cause injury,” it declined to “infer intent to injure as a matter of law merely because the insured’s intentional act violated the criminal law.” Because intent is not a requisite element of reckless homicide, the court concluded that the conviction does not preclude a finding that Strand’s conduct was an accident under the insurance policy.

Implications

Courts across jurisdictions employ different standards in evaluating whether conduct is “accidental” under a governing policy and under what circumstances an intent to injure may be inferred. While the decision in *Strand* turns primarily on the specific facts presented, including the absence of a special verdict in the criminal case and the nature of the criminal charges, the decision illustrates the parameters of issue preclusion for matters relating to insurance coverage.

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