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THE BASSETT BULLETIN™

What Constitutes An Insured's Intentional Act?

What if an insured intentionally hurt another person and that person filed a claim or lawsuit under the policy to recover their damages? Should the insurance company be on the hook to provide coverage to a person who may have intentionally hurt another person?

Tanner v. Nationwide

How does an "intentional injury exclusion" provision, which excludes coverage for an injury caused intentionally by or at the direction of an insured, change whether or not coverage is owed? This type of provision came into play in a recent case handed down by the Texas Supreme Court, in *Tanner v. Nationwide*, [2009 Tex. Lexis 127 \(Tex. 2009\)](#).

In *Tanner*, the Texas Supreme Court had to decide whether an insurance company was responsible for paying the jury verdict awarded to a family that was injured when the insurance company's insured was involved in a high speed police chase that resulted in injuries to the Plaintiffs. The insurance company's position was that it was not on the hook for the insured's actions because of the "intentional injury exclusion" found in the insurance policy. In other words, did the insured's (Mr. Gibbons) attempt to escape from the police forfeit his coverage under an intentional-injury exclusion in his automobile liability insurance policy? The Texas Supreme Court held in favor of the Plaintiffs.

In this particular case, Richard Gibbons was driving his pickup truck on Interstate 35 south of San Marcos when he was pulled over by a Texas state trooper. Gibbons initially stopped, but then fled. The trooper and three other local police officers responded and continued the pursuit. Gibbons exited the interstate and raced through the city in excess speeds.

Gibbons and the Tanner family reached an intersection at the same time, but the Tanner car had the right-of-way. Gibbons slammed on his brakes, but could not avoid the collision and all four Tanners suffered injuries.

The Tanners sued Gibbons and obtained a default judgment. Gibbons' insurer, Nationwide Mutual Fire Insurance Company, refused to pay damages and filed a declaratory-judgment action arguing that the intentional-injury exclusion barred coverage for the Tanners' claims. The trial court and court of appeals found in favor of Nationwide "because, as a matter of law, the intentional-acts exclusion in Gibbons' liability policy excluded any coverage for the Tanners' claims." The Tanners appealed their case to the Supreme Court.

The Court looked at the actual language of Gibbons' insurance policy provision in order to determine whether Nationwide was on the hook for this accident. The provision stated:

“Property damage or bodily injury caused intentionally by or at the direction of an insured, including willful acts the result of which the insured knows or ought to know will follow from the insured's conduct.”

What We Can Take Away

After reviewing this policy, the Court held in favor of the Tanners. Here is the Court's reasoning and what you can take away from the Court's decision:

1. The Court gave the policy language its plain, ordinary meaning unless something else in the policy showed that the parties intended a different, technical meaning. This is not new for the Court and this is how they interpret contracts and insurance policies.

Do your documents say what you mean? Often we find ourselves trying to make something “sound good” when we have not written what we mean. When you are dealing with contracts or any sort of documents, write what you mean in plain and simple words. If there is a dispute down the road, you want your intentions clearly set out.

2. In applying this rule, the Court focused on the fact that Gibbons' policy read “Property damage or bodily injury ***caused intentionally...***” This was the Tanners' saving grace in this case. The Court, using the plain meaning of the provision, took this to mean that Gibbons had to intentionally cause damage in order to get Nationwide off the hook. However, in this case, the Court found that Gibbons' acted intentionally by running from the police, but he did not ***intend*** to hit the Tanners' car. As such, the provision did not apply to him and he was covered under the policy.
3. What actions did the insured take, if any, to avoid any damages or injuries? For example, the evidence at the trial court level showed that Gibbons slammed on his brakes in order to avoid hitting the Tanners' car. Although Gibbons intentionally ran from the cops, the Court saw this evidence as his way to avoid this accident. This evidence reiterated the Court's position that the Tanners' injuries were not intentionally caused by Gibbons.

If you find yourself in a similar position, either as the insurance company or the insured, what evidence is there that the insured tried to avoid the outcome? This will be crucial in determining whether or not there is coverage.

Conclusion

At the end of the day, the Texas Supreme Court found that in order for Nationwide to get off the hook in this case, it had to prove that Gibbons intentionally caused harm to the Tanners. The Court was specific in this standard of proof and Nationwide could not just show that the Tanners' damages were a likely and natural cause of Gibbons' actions. As an insurance company, any intentional-injury exclusion provision needs to be clear and specific and worded carefully in the event of this type of lawsuit. This case is an example of how differently things can turn out with the placement of just one word.

Update – *Entergy Gulfstates, Inc. v. Summers*

In Volume 6, Issue 8 of *The Bassett Bulletin*, The Bassett Firm reported to you on an important Texas Supreme Court case which held that a premises owner who met the Workers' Compensation Act's definition of "general contractor," and who also provided Workers' Compensation insurance to lower-tier subcontractors' employees, was entitled to the benefit of the exclusive remedy defense generally afforded only to employers by the Texas Workers' Compensation Act.

The Bassett Firm had advised that the Texas Legislature was moving fast to statutorily overrule the Supreme Court's ruling in *Entergy*. However, it appears that the Texas Legislature will not overrule the Supreme Court's ruling this session. Although the House of Representatives passed the Bill, the Bill did not make it through the Senate. With the session ending on June 1st, House Bill 1657 just did not garner enough votes. We will see whether the Texas Legislature will attempt to amend the Texas Labor Code when it reconvenes in 2011. The good news is that *Entergy* is good law to protect property owners/general contractors for at least two more years.

The Bassett Firm

**Two Turtle Creek Village
3838 Oak Lawn Avenue
Suite 1300
Dallas, Texas 75219
(214) 219-9900 Telephone
(214) 219-9456 Facsimile
Toll Free: 1-800-310-9769
www.thebassettfirm.com**

ATTORNEYS

- **MIKE H. BASSETT**
- **JENNIFER R. ELDRIDGE**
- **CHRISTINE S. JOHNSON**
- **ROBERT L. MCGEE, JR.**
- **JAMIE J. MCKEY**
- **MICHAEL J. NOORDSY**
- **MATHEW SAMUEL**



Information regarding *The Bassett Bulletin*TM is available from **Angie Stevenson** (astevenson@thebassettfirm.com) at (214) 219-9900. ©2004 The Bassett Firm. All rights reserved.

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