

Ohio Supreme Court Issues Important Decision On Coverage for Intentional Acts

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[Brian S. Sullivan](#), [Richard D. Porotsky Jr.](#), [Jocelyn C. DeMars](#)

On December 30, 2010, the Ohio Supreme Court issued a significant decision which clarified the ever-changing law on coverage for intentional acts. In a key part of the ruling, the Court emphasized the importance of the doctrine of inferred intent, defining when it should apply to preclude coverage. Commenting on prior key cases, the Court explained that the doctrine is not limited to cases of sexual molestation or homicide. Rather, it can be applied whenever the insured's intentional act and the harm caused by that act are intrinsically tied so that the act has necessarily caused the harm. *Allstate Ins. Co. v. Campbell*, 2010-Ohio-6312. In this ruling, the Court rejected the substantial certainty test which had been applied in certain prior opinions.

The strange facts involve an ill-fated teenage prank. A group of teenagers positioned a lightweight Styrofoam target deer, fastened to a piece of wood so that it could stand upright, just below the crest of a hill on a hilly and curvy two-lane, 55-mile-per-hour road. The teens placed the target on the road after dark in a position where drivers could not see it until they were 15 to 30 yards away. After placing the target, the teenagers remained nearby to watch the reaction of motorists. Shortly thereafter, Robert Roby drove over the hill, saw the target, took evasive action, but lost control of his vehicle, which left the road and overturned. Roby and his passenger, Dustin Zachariah, suffered serious injuries as a result.

Roby and Zachariah sued the teens, their parents, and their four insurance companies in the Franklin County Court of Common Pleas. The insurers filed declaratory judgment actions, seeking declarations that they were under no duty to defend or indemnify their insureds because their respective insurance policies contained intentional-act exclusions.

The trial court granted the insurers' motions for summary judgment, inferring intent to injure as a matter of law, relying in part on the finding that the teens' conduct was substantially certain to result in harm. The Tenth District Court of Appeals reversed, finding genuine issues of material fact regarding the teenagers' intent. *Allstate Ins. Co. v. Campbell*, 2009-Ohio-6055 (10th Dt. 2009.) The Ohio Supreme Court affirmed the Tenth District's decision that the trial court erred in granting the motions for summary judgment of three of the insurers (though it allowed summary judgment to stand for one insurer whose policy contained an "extremely broad" exclusion for "'bodily injury' or 'property damage' which results directly or indirectly from * * * an intentional act of any 'insured'"). This split decision shows, as is often the case, that the precise language of the policy can be very important in determining the result.

Justice Lanzinger authored the opinion of the majority, which found summary judgment to be improper as to three of the insurers whose policies generally excluded coverage for injuries which were expected or intended by the insured. Describing the prior legal landscape in Ohio pertaining to inferred intent, the Court noted the two recognized examples of when inferred intent applies -- sexual molestation and homicide. The Court stated that the inferred-intent doctrine is not limited to those two categories of cases.

To determine whether the inferred-intent doctrine applies, a court must determine whether the insured's intentional act and the harm caused are intrinsically tied so that the act has necessarily resulted in the harm. Essentially, when the intentional act could not have been done without causing harm, the insured's testimony regarding intent is irrelevant, and coverage is precluded. The Court warned, however, that Ohio courts must avoid applying the doctrine in cases where the insured's intentional act will not necessarily result in the harm caused by the act.

Embracing this new test, the Court rejected the substantial certainty test (i.e., whether the act is substantially certain to result in the harm) in place in some other jurisdictions, like Massachusetts.

The Court held that the act of placing a target deer in the road, as the teens did here, did not trigger the application of the inferred-intent doctrine because the Court could not say, as a matter of law, that the act necessarily resulted in the harm. The Court pointed out that other cars drove by and avoided the target. As the Court declined to infer intent, it remanded the case for a factual inquiry as to whether the teens intended or expected harm and, in turn, whether the insurance agreements provided coverage under three of the policies. A question remains under this decision as to whether and how the insurers' duty to defend should be determined in such cases where fact finding remains on the issue of inferred intent. Normally, if fact questions remain, a duty to defend applies. Here, the Court is not clear. Future clarification may be needed.

Three justices concurred in part and dissented in part. Justice Pfeifer stated that he would have held that the broader exclusionary language in the American Southern policy was not materially different from the exclusionary language in the other policies. Justice O'Donnell expressed his opinion that the Ohio Supreme Court adopted the substantial certainty test in *Gearing v. Nationwide Ins. Co.*, 76 Ohio St.3d 34, 665 N.E.2d 1115 (1996), and that the new test departed from this law. Finally, Justice Cupp would have held that there was no coverage under the Allstate policy for similar reasons that the majority found no coverage under the American Southern policy.

Notwithstanding the dissenting opinions, in Ohio, the inferred-intent doctrine applies only in cases in which the insured's intentional act and the harm caused by that act are intrinsically tied so that the harm necessarily results from the act.