

[California Supreme Court Resolves Coverage Dispute Over Interplay Between Intentional Acts Exclusion and Severability Clause](#)

Posted on June 24, 2010 by [Larry Golub](#)

Scott Minkler sued David Schwartz and David's mother, Betty Schwartz, alleging that David, an adult, sexually molested Scott, who was then a minor. The complaint alleged several causes of action against David, including sexual battery and intentional infliction of emotional distress, along with a single cause of action for negligent supervision against Betty, based on allegations that David molested Scott in Betty's home, that Betty knew her son was molesting Scott, but that Betty failed to take reasonable steps to stop her son from doing so. Safeco Insurance Company of America insured Betty under a number of homeowners policies, in which David was an additional insured. Relying on the intentional acts exclusion, Safeco denied coverage as to both David and Betty. This insurance coverage issue eventually made its way to the California Supreme Court.

Last week, the Supreme Court issued its decision in [Minkler v. Safeco Insurance Company of America](#) (June 17, 2010). The Court determined that, despite the policy's exclusion for injury that was "expected or intended" by "an" insured, or was the foreseeable result of "an" insured's intentional act, the policy's severability-of-interests clause (which provides that "[t]his insurance applies separately to each insured") created an ambiguity with respect to a co-insured who did not act intentionally such that coverage would be resolved in favor of the co-insured.

After reiterating the rules by which insurance policies are to be interpreted under California law, the Supreme Court framed the issue as follows:

The issue presented is whether this severability or "separate insurance" clause created ambiguity as to the scope of the exclusion for intentional acts by "an" insured, and if so, whether the ambiguity must be resolved in favor of an interpretation whereby the exclusion applied only to the insured who committed such acts. We conclude that the answer to both questions is yes.

In so concluding that the policy provided coverage for Betty, the Court disposed of a number of arguments raised by Safeco (such as the holding would encourage "householders to turn a 'blind eye' to acts of sexual abuse taking place in their homes") as well as finding that the history of the introduction of the severability clause into liability policies in the 1950s further supported the Court's determination of ambiguity.

Moreover, the Court recognized that courts throughout the country have split over the issue, with the majority "concluding that a severability clause does not alter the collective application of an exclusion for intentional, criminal, or fraudulent acts by 'an' or 'any' insured." Despite these "greater number of cases," the Court found that its holding would preserve the objectively reasonable expectations of the insured that there would be coverage so long as the insured's own conduct did not fall within the intentional acts exclusion.

Finally, the Court also sought to downplay the breadth of its holding by noting that many insurers' policies contain an explicit exclusion for claims arising from sexual molestation, or that Safeco could have avoided this uncertainty to begin with by modifying its severability clause to only address the available limits under the policy rather than create an ambiguity between that clause and the intentional acts exclusion.