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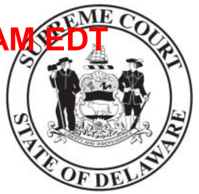

IN THE SUPREME COURT OF THE STATE OF DELAWARE

USAA CASUALTY INSURANCE COMPANY	)	**No: 273, 2019**
	)	
Plaintiff below/Appellant,	)	**Court Below:**
	)	**Superior Court of the State of Delaware, Kent County**
v.	)	**C.A. No. K18C-05-050 NEP**
	)	
TRINITY CARR,	)	
	)	
Defendant below/Appellee.	)	

APPELLANT'S REPLY BRIEF

YOUNG & MCNELIS

/s/ Jeffrey A. Young

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Dated: September 6, 2019

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REPLY ARGUMENT I

I. Viewing Trinity Carr's attack on Amy Joyner from Ms. Joyner's perspective for insurance coverage purposes only creates the oxymoronic accidental intentional act.

To begin, Trinity Carr's ("Carr") Answering Brief discusses the factors a court must weight in determining the existence of coverage. (Answering Brief at page 5). The elements cited by Carr all look to the language of the Complaint in the underlying tort action. Yet, Carr makes no reference of any kind to even a single averment in the two voluminous Complaints filed in the Superior Court wrongful death actions. Likely, that omission was intentional, since said Complaints speak only in terms of the reckless and intentional conduct of Carr in the plotting and execution of her assault on Amy Joyner Francis ("Francis"). There is simply no allegation in either underlying Complaint which could be deemed a statement of negligent conduct by Carr. Moreover, the facts of this attack would bar any such allegation in any case. Simply stated, nothing about the Complaints filed against Carr triggers coverage under the applicable USAA policy.

Additionally, Carr asks this Court to apply the victim perspective to an assessment of accidental conduct, but fails to cite any Delaware case where

homeowner's coverage for an intentional act was required. Both the Camac v. Hall[1] and State Farm Fire and Cas. Co. v. Hackendorn[2] cases denied homeowner's insurance coverage to the insured. Further, Carr fails to address the evolution of the victim perspective in those two cases. Specifically, in the midst of denying insurance coverage, both the Camac and Hackendorn courts relied on this Court's decision in Hudson v. State Farm Mut. Ins. Co.[3]. Hudson, declining to adopt the victim perspective approach, instead relied on the financial responsibility laws and mandates in automobile accident cases to apply coverage. Consequently, what essentially was dicta in Camac and Hackendorn led the Superior Court below to adopt a perspective never before adopted by this Court, and more importantly, contrary to sound public policy.

Through her mother's policy with USAA, Carr potentially qualified for liability coverage, subject to the homeowner's policy terms. This contract between insurer and insured strikes the delicate balance involved with the deliberate acceptance of risk for a fee, by an insurer that is otherwise unconnected to the risk. An insurer must

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[1] 691 A.2d 394 (Del. Super. 1996).

[2] 605 A.2d 3 (Del. Super. 1991).

[3] 569 A.2d 1168 (Del. 1990).

weigh the likely risks posed by an insured in setting premiums in order to make actuarial calculations across all policyholders. Here, however, the Superior Court decided to ignore the mindset of the insured (the party to the contract) when determining whether she should gain the benefit of said coverage. The result is a morally troubling ruling contrary to sound public policy.

No one disputes that the attack perpetrated by Carr on Francis was not only intentional, but premeditated and intended to do real harm. Whether or not Francis expected a physical confrontation in that bathroom that morning, Carr intended every punch and every kick. How can such an attack be deemed an accident? To so hold would open insurance coverage for the acts of the most violent criminal if he can merely take his victim by surprise. Is every "sucker" punch an accident? Is the rape of an unconscious woman an accident? Is the premeditated murder of a sleeping victim an accident? The court below would apparently answer yes to those questions when seeking to provide insurance coverage to the respective criminals.

As stated by the Supreme Court of California:

> Were we to accept [the] argument that any interpretation of the policy term "accident" should be based solely on whether the injury-causing event was expected, foreseen, or designed by the injured party, then intentional acts that by no stretch could be considered accidental nevertheless would fall within the policy's coverage of an "accident." Under [that] reasoning, even child molestation should be considered an

"accident" within the policy's coverage, because presumably the child neither expected nor intended the molestation to occur.[4]

An insured must not be permitted to cover herself with the blanket of insurance protection when she intends to cause injury or damage to person or property. Such insurance would create a striking moral hazard and excuse policyholders from ultimate financial responsibility for the consequences of their intentional conduct. Carr, and any other insured, must not be able to profit through her intentional wrongdoing.

Finally, while different viewers may have different views of the level of violence perpetrated against Francis by Carr on that fateful date, to quote Carr's Answering Brief, "Ms. Carr's physical attack upon Ms. Francis was intentional." Carr Answering Brief at page 8. This Court's previous reversal of the Family Court's adjudication for Carr's criminally negligent homicide changes nothing. Though Carr escaped delinquency for homicide, because the homicide itself was entirely unexpected, that does not change Carr's mental state regarding her intentional assault of Francis. Nor does it change Carr's blatant intent to cause serious physical injury

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Delgado v. Inter Insurance Exch. of Automobile Club of So. Cal., 211 P.3d 1083, 1087 (Cal. 2009); *see also* Chinner v. Gundrum, 833 North NW 2d. 685 (Wis. 2013) (rejecting victim-perspective approach).

with repeated blows to Francis's head and torso. Carr's effort to avoid culpability simply because the ultimate injury suffered by her victim was greater than anticipated should find no purchase. Her escape from criminal consequences does not grant her the fortuity of civil protection as well. The only perspective which should matter in granting an insured insurance must be the insured's.

REPLY ARGUMENT II

II. The policy language at issue unambiguously and appropriately bars homeowner's coverage to an insured who intentionally causes injury to another, whether the extent of injury was intended or expected or not.

Trinity Carr undeniably intended to cause serious bodily injury to Amy Joyner Francis when she struck her repeatedly with a closed fist and kicked her about the head and torso. Carr makes no argument in her brief that she had or could have had the reasonable expectation of insurance coverage for that act. Instead, Carr asks this Court to find coverage for her by throwing her hands up and claiming "Well I had no idea she would die." That is to say, Carr's position is that she wanted to beat Francis, just not beat her to death, and thus profit by the fact that Francis was injured worse than expected. The absurdity of that position is not consistent with the terms of the applicable insurance policy or Delaware law.

The USAA policy at issue excludes coverage when an insured expects or intends to cause harm. Said exclusion has been deemed valid and enforceable repeatedly by Delaware Courts, as discussed in USAA's Opening Brief. That language alone suffices to exclude coverage to Carr given her admittedly intentional attack on Francis. Yet, the USAA policy language goes further. In order to clarify the exclusion, and to prevent the very argument being made by Carr here (essentially,

ignorance as a defense), the USAA policy exclusion for conduct intended to result in bodily injury applies regardless of the extent of said injury. That is, if the insured intends to do harm, the consequences of that intentional harm are not covered. Coverage is action- not outcome- determined.

Here, contrary to the argument posed by Carr, she did indeed figuratively start a fire and fire a shot. She attacked Francis. Although apparently unknown to anyone beforehand, the punches and kicks from Carr triggered Francis's pre-existing heart condition and caused her death. The adjacent building unexpectedly burned down; the innocent, untargeted patron was shot; the beating victim suffered mortal injuries.

Notably, Carr's Answering Brief completely ignores the "eggshell" plaintiff rule of tort law addressed in USAA's Opening Brief. As discussed therein, when Carr committed a tort against Francis, she took her as she found her. Carr does not get to hide behind the allegedly surprising consequences of her intentional act or the unknown vulnerability of her victim to escape responsibility for her actions or to get insurance coverage under her mother's homeowner's policy. Any such ruling would turn long-established tort law on its ear, and open the door to any number of defenses in personal injury cases where the tortfeasor could simply assert that the plaintiff's resulting injury was unforeseeable. Unforeseeable would now mean uncompensable.

Unforeseeability in the Palsgraf context has no bearing here, except potentially to render the Francis family's civil action moot. Amy Francis's death was not some unimaginable final link in a Rube Goldberg machine. She died because she was attacked in a girls' bathroom by Trinity Carr. If there is no causation between tort and damages, then there is no wrongful death case. Otherwise, there is no coverage for this intentional act.

Finally, even assuming, *arguendo*, that the policy language is ambiguous, Carr still does not prevail. As this Court has held, even where a policy is determined to be ambiguous, if the insured had no reasonable expectation of coverage, then there is no coverage.[5] There has been, and can be, no argument by Carr that she expected the protections of homeowner's coverage when she planned and executed her attack on Francis. Indeed, no insured could possibly have a "reasonable expectation" of coverage in that setting. Thus, with no expectation of coverage, any perceived ambiguity in the policy language is meaningless. Carr's actions took her well outside the scope of homeowner's coverage.

In sum, to afford Carr homeowner's insurance coverage in this matter, this

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[5] Bermel v. Liberty Mut. Fire Ins. Co., 56 A.3d 1062, 1072 (Del. 2012). See also Ruggiero v. Montgomery Mut. Ins. Co., 2004 WL 1543234 (Del. Super. June 28, 2004).

Court would have to abrogate the "eggshell" plaintiff doctrine of tort law; create a moral hazard in the insurance industry; deem an intentional act an accident; find ambiguity in clarifying language of a long-accepted policy exclusion; and determine that an assailant expected insurance coverage when she decided to beat up her targeted victim. The law and sound public policy dictate otherwise.

CONCLUSION

Consistent with public policy, well-settled Delaware law, core tort principles, unambiguous contract language, and any reasonable policyholder expectations, the decision by the Court below to deem an intentional assault an accident and to allow an assail to profit by doing greater damage than expected must be reversed.

Respectfully submitted,
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