

Wisconsin Supreme Court Holds that Business-Owners Liability Policy Does not Provide Coverage for Negligent Supervision Claim from Employee Punching Customer

May 29 2018

Posted By: Heidi L. Vogt & John P. Pinzl

Practice Area: Insurance Coverage and Risk Management

***Talley v. Mustafa Mustafa, et al.*, 2018 WI 47 (May 11, 2018)**

In *Talley v. Mustafa Mustafa*, 2018 WI 47 (May 11, 2018) the court considered whether a business-owners liability policy covered a negligent supervision claim arising out of an alleged employee's intentional act of punching a customer in the face. The circuit court granted summary judgment in favor of the insurer, and the court of appeals reversed. The supreme court reversed the court of appeals and held that the policy does not provide coverage "[w]hen the negligent supervision claim pled rests solely on an employee's intentional and unlawful act without any separate basis for a negligence claim against the employer..." *Id.* at ¶ 1.

The case arose after a grocery store security guard in a store owned by the defendant punched a customer in the face during a confrontation that occurred while the customer was shopping for groceries. The store owner's insurance policy granted coverage for bodily injury caused by an "occurrence," which the policy defined as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions." The policy contained an exclusion precluding coverage for "'bodily injury' or 'property damage' expected or intended from the standpoint of the insured." The insurer asserted that no coverage existed under the policy, in part, because an intentional assault is not an "occurrence."

In attempting to establish coverage for the subject incident, the plaintiff pled a cause of action for negligent supervision against the store owner. The insurer argued the negligent supervision allegations were "attempts to bootstrap negligence into the case as a separate tortious act..." *Id.* at ¶ 14. The court noted that it was the first time it has been asked to decide whether coverage exists based on an allegation that an employer should have trained an employee not to punch a customer in the face. *Id.* at ¶ 15. In reversing the court of appeals, the supreme court cited decisions from other jurisdictions "rejecting plaintiffs' attempts to create coverage under commercial general liability policies by simply inserting negligence claims into complaints when employees' intentional acts cause the injuries giving rise to the lawsuits." *Id.*

The court found that "the negligent supervision claim...can qualify as an occurrence only if facts exist showing that (the insured)'s own conduct accidentally caused (the) injuries." *Id.* at ¶ 16. The court concluded that intentionally punching someone in the face two times is not an accident and, because there were no facts in the complaint alleging any specific separate acts by the insured store owner that caused the injuries, there was no occurrence triggering coverage. *Id.*

The court rejected the plaintiff's argument that the store owner's conduct in negligently training and supervising the employee by failing to tell him not to hit people was an occurrence separate and distinct from the intentional act. The court found that the event giving rise to the injury – the punching – was an intentional act.

von Briesen & Roper Legal Update is a periodic publication of von Briesen & Roper, s.c. It is intended for general information purposes for the community and highlights recent changes and developments in the legal area. This publication does not constitute legal advice, and the reader should consult legal counsel to determine how this information applies to any specific situation.