

Pennsylvania Supreme Court Rules That Insurer Must Defend Personal Injury Suit Arising Out Of Shooting During Murder-Suicide

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Previous Alerts have discussed decisions that address whether injuries or damage caused by gun shootings give rise to insurance coverage. See [March 2020 Alert](#); [April 2018 Alert](#). Last month, the Pennsylvania Supreme Court ruled that an insurer was obligated to defend a personal injury suit arising out of a shooting that occurred in the midst of a murder-suicide, reasoning that the policyholder did not necessarily expect or intend to cause the resulting bystander injuries. *Erie Ins. Exch. v. Moore*, 2020 WL 1932642 (Pa. Apr. 22, 2020).

The coverage dispute arose out of a murder-suicide. A former husband broke into the home of his ex-wife and shot and killed her. Before the former husband took his own life, the boyfriend of the ex-wife arrived on the scene. A fight ensued between the two men, during which the former husband's gun was fired several times. The boyfriend was seriously injured and sued the former husband's estate. The estate sought coverage from Erie under homeowners' and catastrophe policies, both of which defined "occurrence" as "an accident" and which excluded injury or damage "expected or intended by anyone we protect," including injury "different than what was expected or intended" in "degree, kind or quality."

A trial court granted Erie's summary judgment motion, ruling that the insurer had no duty to defend because the injuries could not be deemed "accidental" and were the result of deliberate conduct. An intermediate court reversed, noting that "not all injuries from gun violence are intentional" and finding that the underlying allegations "fairly portray a situation in which injury may have been inflicted unintentionally." The Supreme Court affirmed.

The Pennsylvania Supreme Court reasoned that the complaint, taken as true and liberally construed, alleged an accidental shooting as to the boyfriend. The complaint alleged that there was a sudden struggle between the men, in which the former husband was acting "crazy" and "incoherent." Further, the complaint asserted that he "negligently, carelessly and recklessly caused the weapon to be fired." The court rejected the contention that the allegations of negligence were "artful pleading" designed to invoke insurance coverage. The court distinguished cases involving conduct that was clearly intentional (even if couched in allegations of negligence) and caused unintended injuries, and which did not trigger an insurer's defense obligations. Here, the court explained, the initial conduct itself was allegedly accidental and/or negligent.

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