

Schizophrenia, Knives, and Insurance: A Complex Coverage Scenario

Butterfield v Intact Insurance Company, 2022 ONSC 4060, Affirmed 2023 ONCA 246

Brett Butterfield suffered a psychotic episode while at a firearms store that ended with him stabbing the owner in the neck with a large knife. He was charged with aggravated assault, but was found not criminally responsible due to his schizophrenia.

The owner sued Mr Butterfield in negligence, arguing it was reasonably foreseeable that he might have a psychotic episode before or after he acquired his firearms license and hurt someone.

Mr Butterfield held a Condominium Unit Owners Policy with Intact Insurance Company at the time of the attack that included third party liability coverage up to \$2MM. So upon receiving the lawsuit, he asked them to defend and indemnify him.

Intact agreed that the claim fell within the initial grant of coverage, but denied it because the policy excluded coverage for injuries caused by intentional or criminal acts. They made that decision despite the fact that the lawsuit against Mr Butterfield was totally grounded in negligence. It did not allege assault, battery, or any other intentional tort or that he committed a criminal act.

So Mr Butterfield applied to the Ontario Superior Court of Justice for an order directing Intact to defend the action.

The Court emphasized that insurance carriers are required to defend insureds against properly pleaded allegations that, if proven, may entitle them to indemnification.

There is a three-step process to determine whether a claim might trigger indemnity.

First, the Court must look beyond the choice of labels and determine the true nature of the claims – “the plaintiff cannot change an intentional tort into a negligent one simply by choice of words.”

Second, it must determine if any claims are derivative in nature; if any claims share the same underlying elements. If “both negligence and intentional tort claims arise from the same action and cause the same harm, the negligence claim is derivative, and it will be subsumed into the intentional tort for the purpose of the exclusion clause analysis.”¹

Finally, the Court must decide if any of the properly pleaded, non-derivative claims could trigger indemnity.

Mr Butterfield argued that his lawsuit was totally grounded in negligence and that because he was suffering from a psychotic episode at the time of the attack, he was unable to form intent to commit an intentional tort.

The Court rejected that argument on the basis that he admitted to committing a criminal act in the criminal proceeding and “understood the physical nature and consequences” of his actions.

¹ *Non-Marine Underwriters, Lloyd’s of London v Scalera*, 2000 SCC 24, para 85.

Mr Butterfield also argued that the alleged negligence upon which the lawsuit was based occurred prior to the attack. So even if the attack itself was intentional or criminal, “the Court should treat the alleged negligent act and the intentional tort separately.”²

The Court also rejected that argument, reasoning that the true nature of Mr Butterfield’s claim was the intentional tort of assault:

I have carefully reviewed the Statement of Claim. I find that the alleged negligence claim is based on the same harm as an intentional tort of assault (if it had been pleaded). The elements of the negligence and intentional tort are not sufficiently disparate to make them unrelated. While Mr. Butterfield may have been negligent in applying for the firearms permit, there is no causal link between that negligence and the damages, without the intentional tort of assault.

He was simply trying to change an intentional tort into a negligence one “to ensure that the defendant’s insurer will provide the necessary ‘deep pocket’ to make a judgment recoverable. The negligence claim is derivative of an intentional tort, which is the true nature of the claim.”³

For those reasons, the Court concluded that the exclusionary clause was applicable and Intact did not owe a duty to defend or indemnify Mr Butterfield.

² *Butterfield*, para 16.

³ *Butterfield*, para 18.