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IN THE SUPREME COURT OF FLORIDA

RENUKA PRASAD,

Appellant,

vs.

ALLSTATE INSURANCE COMPANY,

Appellee.
_____/

APPEAL NO: 91-3914
SUPREME COURT NO: 81,825

APPELLANT'S INITIAL BRIEF

STATEMENT RE: RECORD NOTATIONS

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PRELIMINARY STATEMENT

The symbol (R,1) refers to pages in the record on appeal.

Although the record on appeal contains all briefs written by the parties, great effort has been made to avoid repetition of arguments, however, Renuka Prasad would incorporate all previous arguments and authorities by counsel herein.

"PRASAD" herein refers to the injured claimant. "PALAT" refers to the "insured" homeowners for whom Allstate refuses lawful coverage. "NAUTH" refers to PALAT's insane adult son who Allstate also lists as an "insured" but denies coverage.

TABLE OF CITATIONS

Other Authority

STATEMENT OF THE CASE AND OF THE FACTS

This cause commenced below in a Declaratory Judgment action in which Appellee, Allstate Insurance Company sought a declaration that its Deluxe Homeowner's insurance policy provided no coverage for personal injuries sustained by Appellant, Renuka Prasad at the hands of one Toreshwar Nauth and through the negligence of one Chandra Palat. The cause was commenced by Allstate filing a Complaint (R1-1) seeking declaratory judgment with attachments including a State Court action for damages and a copy of Allstate's insurance policy. Later, an Amended Complaint was filed by Allstate (R1-8) attaching a copy of the deluxe homeonwer's policy and a copy of the Complaint PRASAD filed against NAUTH and PALAT in the Circuit Court in and For Orange County, Florida bearing case number CI91-15. Following a Motion to Dismiss (R1-9) which was denied, Renuka Prasad filed her Answer on May 16, 1991 (R1-14). A Motion for Judgment on the Pleadings (R1-17) with Memoranda (R1-18) and Supplemental Authority (R1-19) was soon thereafter filed by Allstate. The Court below initially and without opinion granted on July 30, 1991 the Motion for Judgment on the Pleadings (R1-21). However, this was before Renuka Prasad's Memorandum in Opposition had been filed largely due to communication difficulties between counsel of record. In any event, counsel for Allstate agreed to an extension of time to file the memorandum, and counsel for Renuka Prasad filed a Motion for Relief from Judgment (1-22)

with memorandum (R1-23). Renuka Prasad also filed on August 12, 1991 a Memorandum (R1-23) in Opposition to the Motion for Judgment on the Pleadings previously filed. On August 21, 1991 the Court below entered an Order (R1-25) granting the Motion for Relief from Judgment on the Pleadings, again granting the Motion for Judgment on the Pleadings, declaring the policy of insurance inapplicable, as a matter of law, to any conceivable allegation or scenario which could arise from the allegations of the State Court Complaint.

Prasad, on September 19, 1991, filed her Notice of Appeal to the Eleventh Circuit of the United States Court of Appeals. Briefs were filed and Oral Argument had in Atlanta, Georgia on November 3, 1992. By opinion dated May 20, 1993 (Allstate Insurance Company v. Prasad, #91-3914) the Eleventh Circuit Certified three questions to this Honorable Court:

1. "Under Florida law, does the intentional acts exclusion of the policy in question apply in circumstances alleged in the State Court Complaint?"

2. "Are the injuries alleged in the State Court Complaint the result of an 'accidental loss' as described in the policy?"

3. "Does the criminal acts exclusion of the policy apply in the circumstances alleged in the State Court Complaint?"

Since this case is on appeal from the granting of a Motion for Judgment on the Pleadings, the only relevant facts in the record, are the allegations in the original Complaint seeking damages, as filed in State Court, which original

Complaint was attached to the Amended Declaratory Judgment Complaint (R1-8) and the terms of the insurance policy also attached to the Amended Complaint for Declaratory Judgment.

With regard to the original Complaint, and as can be seen from the record, Plaintiff, Renuka Prasad filed a Complaint against Toreshwar Nauth and Chandra Palat for damages occasioned by personal injuries she sustained at the hands of Toreshwar Nauth. It is also alleged that the damages were a result of negligence to be discussed more fully below on the part of Chandra Palat.

The Appellee herein, Allstate Insurance Company, pre-empted the State Court by filing a Declaratory Judgment action in the Middle District of Florida, Orlando Division, seeking to have its rights and obligations under a Deluxe Homeowner's insurance policy under which both Chandra Palat and Toreshwar Nauth were "insureds", determined vis-a-vis the facts and circumstances of the events alleged in the State Court Complaint.

Basically, the Complaint in State Court contained the following allegations: Toreshwar Nauth was Chandra Palat's adult son. Chandra Palat assumed the care of Toreshwar Nauth as his guardian, with respect to his daily living, knowing that he could become violently insane if he did not maintain medication for his chronic paranoid schizophrenia. PALAT knew that Toreshwar Nauth was a chronic paranoid schizophrenic and had been hospitalized periodically in the past during his

thirty-six year lifetime. Chandra Palat knew that Toreshwar Nauth was only stable when he remained on his antipsychotic medicine.

Before the accident, Toreshwar Nauth negligently stopped taking his medication even though Chandra Palat told him to continue to take his medications. As a result of his negligent failure to take his medication, Toreshwar Nauth's mental condition deteriorated dramatically, and he threatened Chandra Palat. On February 26, 1989 Chandra Palat asked the Plaintiff below, Renuka Prasad, to her house. PALAT did not tell PRASAD when she invited PRASAD to her home, that NAUTH was not taking his medication; she did not advise PRASAD that the mental condition of NAUTH had deteriorated; nor did PALAT advise PRASAD that PALAT had been violently threatened herself by NAUTH. Additionally, Chandra Palat failed to control Toreshwar Nauth nor did she even warn Renuka Prasad of his dangerous propensities on the date of the incident, nor the fact that he was not taking his medication and that he had become violent.

When Renuka Prasad arrived, Toreshwar Nauth approached her simply carrying a knife, and then without warning, Toreshwar NAUTH stabbed her repeatedly. Doctors Gutman and Denzinger, both psychiatrists appointed by the State Court, have said that Toreshwar Nauth was and remains a chronic paranoid delusional schizophrenic. The doctors determined that as Toreshwar Nauth was not on his medication, he had

severely deteriorated in his mental condition, and was insane and was totally unable to form any kind of intent.

It is alleged that the negligence of Chandra Palat consists of her failure to warn Renuka Prasad and failure to control the person over whom she had voluntarily undertaken care during his mental illness. The negligence of Toreshwar Nauth is alleged to have been in not taking his medication, and as a result thereafter his deterioration into a mentally deranged state without volition resulting in the injuries sustained by Renuka Prasad.

The Court below reviewed the pleadings only and decided that coverage of Chandra Palat for the negligence of PALAT or the negligence of Toreshwar Nauth, did not exist under the policy of homeowner's insurance attached to the Amended Complaint for Declaratory Judgment. Since the case was decided on a Motion for Judgment on the Pleadings, only the Amended Complaint and policy of insurance were considered along with the memoranda. Had the case progressed, facts would have come out showing that a Motion for Judgment on the Pleadings was inappropriate. The Order reviewed should be reversed because the Court below erred in formulating and/or applying the various rules of law and rules of construction for interpreting insurance policies. The Court below also erred in granting a Motion for Judgment on the Pleadings where there were circumstances which if proven would have been covered by the insurance policy at issue and consequently the Court also improperly erred in applying the rule of law to the relief sought below.

SUMMARY OF ARGUMENT

Since the injuries must be an "accidental loss" before coverage applies at the outset, the question of what constitutes an "accidental loss" will be dealt with initially. Only if a loss is accidental need an insured move on to determine the applicability of the exclusion raised by Allstate as to whether such injuries may reasonably be expected to result from the intentional or criminal acts of an insured person.

In the construction of insurance policies, the first inquiry is whether a term in question is ambiguous, to wit: susceptible of more than one meaning. If so, the policy language must be constructed broadly for coverage. This very Court has held in Dimmitt Chevrolet v. Southeastern Fidelity (infra) that the term sudden and accidental is ambiguous as a matter of law. The definition, applied by the Court, is that as long as the result is unexpected and unintentional on the part of the insured, it is accidental. Toreshwar Nauth failed to take his medicine and as a result was swept back into a chronic paranoid schizophrenic insanity in which he injured his sister, Renuka Prasad. The injuries were unexpected and unintentional from the standpoint of the insured, Toreshwar Nauth. Applying prior definitions of "accident" utilized by Allstate from the case of Christ v. Progressive (infra) results in this loss being "accidental". Therefore the failure to take his medicine was the known cause of the

knifing but the knifing, was an unintentional result. Thus it can be seen that the definition of "accidental" is result related and is dependent on what the insured expected or intended.

As to Chandra Palat, the failure to control Toreshwar Nauth, or warn Renuka Prasad, resulted in an unexpected and unintentional (by Palat) knifing as well as resulting from an unexpected event from a known cause.

The next area of inquiry is whether the acts of either Toreshwar Nauth or Chandra Palat were intended or criminal and, if so, and only if so, whether the injuries were reasonably expected to result from the criminal or intentional acts.

With respect to whether Toreshwar Nauth's acts were either intentional or criminal, it is alleged in the Amended Complaint, and thus stipulated for the purposes of this appeal, that Toreshwar Nauth was a unmedicated chronic paranoid schizophrenic. He was found by doctors not able to formulate intent. Had the case progressed, testimony would have revealed that his actions and emotions of his body were not even volitional. In order for the intentional or criminal act exclusion to apply, there must at least be some volition on the part of the actor; otherwise all actions which an outsider might think, could reasonably cause harm would be deemed to be "intentional". If Allstate wished to have a limited definition of intent, then the same should have been

in their policy. The rules of construction require that the broad definition be given the afford where there is more than one definition available for a term-in this event "intentional or criminal". Toreshwar Nauth was totally incapable of formulating intent. The pleadings so alleged that without intent he was incapable of a "criminal event" and it is so alleged. He was insane at the time of the event and at the time of trial.

There is no suggestion that Chandra Palat acted either intentionally or criminally, in failing to control her son or warn of the danger.

Only when the acts of "an insured" (Nauth here) are determined to be criminal or intentional does the inquiry proceed to whether the "bodily injury" the result may be reasonably expected from the acts." Appellant, Renuka Prasad, submits however that even if the acts were somehow deemed "intentional or criminal", it is not reasonable to expect that Toreshwar Nauth's failing to take his medicine would result in his total relapse into insanity further resulting in the stabbing of his sister.

A Motion for Judgment on the Pleadings cannot be granted where under any scenario, the non-moving party would be entitled to the relief sought. Under the scenarios suggested above, coverage is afforded, and therefore no exclusions apply under the Allstate policy for the actions complained of against Chanda Palat and Toreshwar Nauth.

ARGUMENT

I. THE POLICY OF INSURANCE HEREIN AT ISSUE MUST BE BROADLY CONSTRUED TO AFFORD COVERAGE TO INSUREDS IF ANY PERTINENT POLICY TERMS, PROVISIONS OR LANGUAGE IS AMBIGUOUS.

Before beginning with the argument concerning the insurance contract at issue and the pleadings at issue herein, it is necessary to note that when a Motion for Judgment on the Pleadings is filed, all of the factual allegations of the Complaint are accepted as true. Hill v. Linahan, 697 F.2d 1032 (11th Cir. 1983). Additionally, the Court must examine the Complaint and see if the Plaintiff might recover under any circumstances which could be proven. General Guaranty v. Parkerson, 369 F.2d 825 (5th Cir. 1966). A Declaratory Judgment action, in the case herein, applies those rules to the policy applicable thereto as attached to the Amended Complaint for Declaratory Judgment (R1-8).

Where an insurance policy is at issue and the policy provisions are uncertain or ambiguous, the policy must be construed liberally in favor of coverage though Courts must not rewrite contracts. State Farm v. Pridgen, 498 So.2d 1245 (Fla. 1986). By definition, an ambiguity exists where more than one interpretation may be fairly given to a policy provision. Ellsworth v. INA, 508 So.2d 395 (Fla. 1st DCA 1987).

The first question in this cause is then whether the policy language is ambiguous, i.e. is there more than one

meaning, construction, or for any of the pertinent terms "accidental", "intentional" or "criminal". If a policy contains ambiguous provisions, then that definition, if available, which affords coverage must be applied.

II. THE INJURIES ALLEGED IN THE STATE COURT COMPLAINT ARE AN "ACCIDENTAL LOSS" AS DESCRIBED IN THE POLICY.

The first inquiry in the case pending before this Court, is whether, under any circumstances the actions alleged in the Complaint could be shown to be "an accidental loss" which an insured becomes legally obligated to pay. Two insureds have been sued. If as to either of them their conduct constitutes an accident, then that person is covered unless an exclusion (which will be discussed infra) applies.

After all the briefs had been filed in the Eleventh Circuit, this Honorable Court issued its opinion in Dimmitt Chevrolet v. Southeastern Fidelity Insurance Co., 17 FLW S579 (9/3/92). There this very Court was called upon to interpret the policy term "sudden and accidental". This Court held that the term "sudden and accidental" was ambiguous as a matter of law, thus fulfilling the first step in policy construction/ interpretation (i.e. determining if a term is susceptible to more than one meaning). This Court in Dimmitt, infra, discussed the various definitions of "accidental" and as again required by our rules of construction, adopted a broad definition (as did the states of Georgia and Wisconsin as discussed therein) affording coverage. The definition stated that as long as the result is "unexpected and unintended, on the part of the insured", its an accident.

It is alleged in the case at bar that Toreshwar Nauth neither expected nor intended the injuries to Renuka Prasad. He was insane and literally did not know what he was doing.

He certainly did not expect or intend his failure to take his medicine to result in knife wounds to Renuka Prasad. The psychiatrists found that the act of stabbing was not intended or expected by Toreshwar Nauth nor was the result expected or intended (injuries to Renuka Prasad).

The facts as alleged in the Amended Complaint (State Court Complaint) with respect to Chandra Palat show that she neither expected nor intended her failure to warn Renuka Prasad, nor her failure to control Toreshwar Nauth to result in injuries to Renuka Prasad.

It is important to note that this definition of "accident" will not require coverage to be afforded in the sexual offense cases Allstate so heavily relied upon in its briefs and arguments. In the sexual abuse line of cases, the results (harm to a child) may not be specifically intended by the particular insured molestor, but surely these results are not totally unexpected by the insured molestor, and therefore all of these sexual molestor cases turned on the fact that the acts of the insured were intentional, and did not rest on the issue of the meaning of the term "accidental". Insane persons, such as Toreshwar Nauth do not have the cognitive presence to appreciate their actions, nor do they know what they are doing, nor do they have the capacity to expect any result from actions they are unaware of. The cognitive ability and understanding of the sex offender separates the sex offender, from a person such as Toreshwar Nauth, whom the

psychiatrists found can literally neither expect nor intend.

Renuka Prasad submits then that the question of whether an injury is caused by an "accident", depends on whether the results are expected or intended by the insured, and that this very Court has so held. The nature of the event giving rise to the result (here the injuries to Renuka Prasad) should only be considered on the issue of whether the intentional or criminal act exclusion applies. Whether an injury is "accidental" should depend on whether the results were expected or intended. Whether injuries are excluded from coverage should depend on whether the acts (event) were intentional or criminal and the injury expected reasonably.

Many Courts have, however, looked to the event, in determining whether a loss is the result of an accident. This is what Allstate has seemed to urge in its reliance on Christ v. Progressive, 101 So.2d 821 (Fla. 2d DCA 1958). Even using an "event approach" for defining "accident" (an approach Appellant Prasad urges should not be used in light of Dimmitt, supra), the losses sustained by Renuka Prasad are indisputably accidental losses.

The initial first inquiry is still whether "accident" is susceptible of more than one meaning so as to render the term ambiguous and thus require broad construction of the language for coverage. This Court in Dimmitt, supra, has held "sudden and accidental" to be ambiguous as a matter of law. This is not surprising. The Court in Christ, supra, mentioned at

least five different definitions for the word "accident". These include "unusual and unexpected events happening without negligence"; "an undesigned sudden and unexpected event"; "chance or contingency"; "happening by chance or unexpectedly" or; "an event from an unknown cause or an unexpected event from a known cause". Christ v. Progressive Insurance, 101 So.2d 821 (Fla. 2nd DCA 1958). Additionally, there are multiple definitions from Webster's Third New International Dictionary Unabridged including:

> "a sudden event" or "change occurring without intent or volition through carelessness, unawareness or ignorance or a combination of causes in producing an unfortunate result."

The next question is whether any of those definitions or any other definition of "accident" affords coverage. With respect to Toreshwar Nauth, he has been charged in the Complaint in State Court, with negligently failing to take his medicine following which he became deranged and insane which in turn caused him to stab Renuka Prasad. The act and result was totally unexpected. Using the definition in Christ, supra, where the failure to take medicine resulted in a stabbing, it is an unexpected event (stabbing) from a known cause (failure to take the medicine). Also using the Christ definitions, an event happening unexpectedly is also one in which a person fails to take medicine following which he stabs a visitor to the house. Using the definition in Webster of:

an unforeseen, unplanned event or condition or a sudden event or change occurring without intent or volition through carelessness, unawareness or ignorance or a combination of causes producing an unfortunate result... it can be seen that the stabbing was certainly a sudden and unplanned event, and that due to the fact that the stabbing was accomplished by someone incapable of a volitional act, the act was without volition, and caused by the carelessness of Toreshwar Nauth (in not taking the medications necessary to render Toreshwar Nauth capable of volitional actions).

The whole event must be evaluated to determine if the event is "an accident". One cannot just ask the simple question of whether a person stabbing someone else constitutes an accident. The question is whether: if Toreshwar Nauth does not take his medicine and stabs PALAT, is it an accident; where accident is defined broadly for coverage even if the stabbing itself is only considered with respect to the definition of the word "accident". According to Webster's, an accident is a lack of intent or necessity. Stabbing itself could occur without intent or necessity. Looking at the Christ definitions again, this stabbing by Toreshwar Nauth in and of itself is "an undesigned sudden and unexpected act".

The cases usually cited by Allstate dealing with accident, all deal with volitional, not non-volitional, acts. These volitional acts produced known and expected consequences in all their cases. A man shot his pursuers in Draffen v.

Allstate, 407 So.2d 1063 (Fla. 2nd DCA 1981). An insured set off a smoke bomb. West Building Supplies v. Allstate, 363 So.2d 398 (Fla. 1st DCA 1978). An insured fired a gun into a crowd. Allstate v. Connors, 644 F.Supp. 31 (E.D. Mich. 1986). A man dies in a fight over a gun. Gulf Insurance Company v. Lloyd, 651 F.Supp. 518 (S.D. Miss. 1986). All of these cases involve people who were fully cognizant and volitionally acted. The reason those were not events set out in the cited cases determined to be "accidents" were because the actions examined therein, were not happening by chance, and; the actions were not unusual, and; the actions were not from an unknown cause, and the actions and results were not expected. Thus, under Dimmitt, supra, while the results may not have been specifically intended, they were most probably expected and thus not accidental.

When Toreshwar Nauth stabbed Renuka Prasad, it was an accident, because there was no volition on the part of Toreshwar Nauth. This is not someone who consciously does an act causing unintended harm, as in the case relied upon by Allstate. If the case had gone far enough, it would have been shown that Toreshwar Nauth had no control over his own actions. He literally was out of his mind and out of consciousness.

Ultimately, Allstate should define accident in its policy, but having failed to do so, Allstate is obligated to utilize a definition which is the broadest one available and

such a definition affords coverage for these events. When Toreshwar Nauth fails to take his medicine it is a negligent act and a known cause of the stabbing which occurs - the unexpected event from the known cause. It is an accident by the definition used in Christ. The stabbing itself without volition is an accident by the definition cited from Webster's. It is an accident under Webster's because it was unexpected and unplanned.

The situation in which Toreshwar Nauth finds himself is similar to that of an epileptic who does not take his medication, and then, as a result of a seizure, causes his automobile to strike someone else. The epileptic has had an accident because the epileptic forgot to take the medication, and the failure to take the medication caused the epileptic to lose control thereby hurting another. There may be fact issues as to whether or not Toreshwar Nauth totally lost control sufficient to have his activities described as an accident, but on the Motion for Judgment on the Pleadings, if there is any circumstance that can result in a success for the Plaintiff, then a judgment on the pleadings is not appropriate.

The next question to determine with respect to accidental loss is whether, with respect to Chandra Palat, the events were an accident. If one just examines Toreshwar Nauth's conduct as previously discussed, Appellant, Renuka Prasad, continues to submit that the event was an accident and covered by Allstate's policy. Even if it is deemed that

Toreshwar Nauth's conduct, as discussed above, is not an accident, the entire circumtances of the event should be examined where Chandra Palat fails to control the person over whom she has assumed care and fails to warn Renuka Prasad. The entire circumstance of the failure to warn and failure to control resulting in a stabbing, is an accident by the definitions referenced above.

Allstate's policy of insurance states that Allstate will pay sums arising from an accidental loss which an insured person becomes legally obligated to pay. Cases are clear that Chandra Palat has a duty to control Toreshwar Nauth under the circumstances alleged in the Complaint and to warn others if he is a danger. This duty arises from assuming control over a dangerous person, from providing services and from owning the premises upon which Toreshwar Nauth resides. Garrison v. Hancock, 484 So.2d 1257 (Fla. 4th DCA 1985). In Garrison, a supervisor of a mentally deficient person was held responsible for harm caused by the mentally deficient person. The liability was held to arise from the duties referenced above.

Allstate's policy of insurance covers accidental losses which an insured becomes legally obligated to pay. It is clear that Chandra Palat is legally obligated to pay. She is an insured, so the next question is whether or not the injuries are as a result of an accidental loss as to her. Use of "an insured" means that if either insured is legally obligated, and no exclusions apply (exclusions discussed

infra), then the coverage will be applied. Therefore, the description of Toreshwar Nauth's activities need not fit the definition of accident to render Allstate liable for damages Chandra Palat is obligated to pay if, as to Chandra Palat the events constitute accidental loss. Chandra Palat failed to control and warn. Examining the definition from Christ, supra, it is apparent that as to Chandra Palat, the events in the Complaint are an unexpected event (stabbing) from a known cause (no control and failure to warn). From the Webster definitions of an unforeseen, unplanned event it is clear that as to Chandra Palat she did not plan her failure to control or warn.

Again under Dimmitt, supra, the results were neither expected nor intentional by Chandra Palat. With Toreshwar Nauth totally without control, Chandra Palat is in the situation of an owner of a wild animal. The animal's intent is immaterial with respect to whether or not the event is an accident. Chandra Palat, as is the owner of the animal, is liable for failing to control the animal. The happening of the event, from her perspective, is accidental even if, as to Toreshwar Nauth, it was not.

To recapitulate a bit, from Toreshar Nauth's standpoint and the standpoint of Chandra Palat broadly construed the event complained of in the Complaint filed in State Court is an accident. Neither Chandra Palat nor Toreshwar Nauth intended or expected the results - injuries to Renuka Prasad.

Even if the event is examined, the event from both actors' standpoint, lacks the volition necessary to render it non-accidental. By definition in Christ, supra, and in the Webster definitions, the events are accidents in this case. In the common vernacular, an accident is something that the actor does not mean to do. Toreshwar Nauth was so delusionally psychotic that he did not mean to stab anybody, or; at least that is the scenario that is possible and thus the case should not have been disposed of by way of judgment on the pleadings. Chandra Palat did not mean to have a failure of control and did not mean to have her failure to control and warn cause harm to Renuka Prasad. In the cases relied upon by Allstate, all of the actors meant to do what they did though they did not mean to harm anyone.

III. UNDER FLORIDA LAW, NEITHER THE INTENTIONAL ACTS EXCLUSION NOR THE CRIMINAL ACTS EXCLUSION OF THE POLICY IN QUESTION APPLY IN THE CIRCUMTANCES ALLEGED IN THE STATE COURT COMPLAINT.

The next and equally difficult question presented on appeal is whether or not the "intentional or criminal act" exclusion applies. That portion of the policy provides that Allstate does not pay for any bodily injury or property damage which may reasonably be expected to result from the intentional or criminal acts of an insured person or which are in fact intended by an insured person. If the injuries are as a result of intentional or criminal actions by Toreshwar Nauth, there is no coverage under the Allstate policy even if Chandra Palat's actions are not intentional.

The Complaint in State Court alleges that NAUTH was totally incapable of intent and determined to be insane, and therefore was not proceeded against criminally after this determination by the Court's psychiatrists. Had the case gone on, it would have been shown that he was insane, totally out of control, unaware of what he was doing and without any volition at all. The Court below found by an objective standard that an intentional act defense applies where a reasonable person would expect intentional acts to result in injury to the victim, i.e. that bodily injury reasonably expected could be expected from a knife attack. The Court further reasoned that injuries flowed from the proscribed conduct, to-wit: the knife attack.

If the proscribed conduct was the alleged failure to take medication, then a knife attack by an unaware, non-volitional actor cannot be said to flow from such a failure. This assumes, however, that the Middle District Court's interpretation of the definition of intent is correct in the application of an objective standard.

The Middle District, with all due respect, is incorrect by requiring an objective test of intent. Intent is subjective by definition. If, for insurance purposes, intent is to be objectively defined, then the intent should be defined in the policy of insurance that way before the definition can be applied to the policy. An objective standard for "intent", greatly restricts coverage compared to a subjective standard of intent. The rule of construction requires a policy exclusion to be given broad effect if it is susceptible to more than one meaning. Clearly "intent" can be either subjective or objective. But a subjective definition of intent is broader and must clearly be the definitional standard in the policy.

The policy language excludes coverage for injuries which may be reasonably expectd to result from the intentional or criminal acts of an insured. The first step is to determine if the acts were either intentional or criminal. If there are no criminal acts nor intentional acts, then one never gets to the question of whether the results "may be reasonably expected".

In the cases relied upon in Allstate v. Crews, 734 F.Supp. 1574 (M.D. Fla. 1989); Allstate v. S.L., 704 F.Supp. 1059 (S.D. Fla. 1989); Allstate v. Travers, 703 F.Supp. 911 (N.D. Fla. 1988); and Landis v. Allstate, 546 So.2d 1051 (Fla. 1989); all of the acts done by the alleged insureds were volitional, i.e. intentionally done. The holdings in those cases were in fact that specific intent to injure was not required with a volitional, i.e. intentional act, in order for the intentional act exclusion to apply. Those cases (three of which were sexual molestation cases and one of which - Cruse involved a sane man with a gun), all dealt with people who knew what they were doing at the time and were simply alleged not to have intended harm. The acts of these insureds in the cited cases were all intentional. None of those actors were insane. Toreshwar Nauth did not even have the ability to act volitionally or intentionally. He did not know what he was doing and consequently there is no intent to even act, let alone an intent to harm.

There are two Florida cases which directly deal with the issue of an intentional act exclusion in situations where the alleged insured is insane.

Northland Insurance Company v. Mautino, 433 So.2d 1225, (Fla. 3d DCA 1983), involved a fire started on a houseboat by an insane person named Streetzel. The 3rd District Court of Appeal held as follows on page 1227 in Northland, supra. Northland's alternative argument that the trial court erred in

directing a verdict on the issue of coverage because Streetzel acted intentionally is equally unavailing. An insane person cannot be deemed to have acted intentionally for purposes of an intentional tort exclusions clause in an indemnification policy.

In Arkwright-Boston Manufacturers Mutual Insurance Company v. Dunkel, 363 So.2d 190 (Fla. 3d DCA 1978), the resident-insured was insane, and shot the daughter and mother; the daughter lived and the mother died. The sole issue was whether an allegedly insane individual possesses the requisite capacity to act intentionally. The Third District Court of Appeal held that an insane persons cannot be deemed to have acted intentionally. The Court cited George v. Stone, 260 So.2d 259 (Fla. 4th DCA 1972) stating that an insane individual cannot commit an intentional act. This view appears to be adhered to by the leading authorities on the subject. See 1A Appleman Insurance Law & Practice, 482 (1165) & 10 Couch on Insurance 2d, 41,667 (1962).

Allstate cites Draffen v. Allstate Insurance Co., 407 So.2d 1063, (Fla. 2d DCA 1981), where the insured actually and intentionally robbed three women at gunpoint in the parking lot of a restaurant. As he tried to escape, the insured intentionally fired the gun six times, shooting two individuals. Allstate cites the discussion on the issue of "accident". The issue of intent was raised in Draffen if the case is fully read. Directly after the quote cited by Allstate on page 1065, the Court went on to say that:

> "If appellant had intended merely to frighten his pursuers he could have fired at the ground or in the air. He did neither. Instead he fired in the direction of his pursuers, with what in different circumstances might be termed commendable accuracy. It is clear that appellant most certainly did intend to kill or injure one or more of his pursuers, although he may not have expected as much success as he actually had (i.e. shot two pursuers)".

The case cited by Allstate is once again accepted with approval by Renuka Prasad, as Torshwar Nauth never was capable of forming the intent required to fall within the intentional acts exclusion provisions of the contract. There was no question of the insured's sanity in Draffen. The insured intentionally committed an act of shooting, where the injuries to the pursuers were a foreseeable outcome of the intentional act, and the insured suffered from no mental insanity or infirmity.

Allstate cited below West Building Supplies Inc. v. Allstate, 363 So.2d 398 (Fla. 1st DCA 1978), in which the policy exclusion extended to damage which is either expected or intended by the insured. In West, the insured's son intentionally set off a smoke bomb in a building. The First District Court of Appeals held that because the son, Keith, intended the ignition of the bomb in the building, both smoke and fire were the natural and forseeable result of the son's intent. Renuka Prasad, submits that Toreshwar Nauth did not intend to hurt Renuka Prasad as he was incapable of intent. Keith intended the ignition of the bomb. Keith was not insane. The two cases are not inopposite. Chandra Palat

neither expected nor predicted the stabbing of Renuka Prasad by her insane and uncontrollable son.

Allstate cites Allstate Ins. Co. v. Connors, 644 F.Supp. 31 (E.D. Mich., 1986). Here the insured handed a loaded rifle to an angry man (Rutland) when he the insured knew the angry man would return to the scene of a fight and intentionally discharge the rifle. The angry man killed one person and wounding one person. Connor, the insured, knowing what Rutland intended to do with the rifle, was charged with the natural and foreseeable results of giving Rutland the gun. Rutland was fully competent and his intent was never at issue. Rutland plead to second degree murder and his plea was knowingly, voluntarily and intelligently entered. Due to the unquestionable intent of Rutland and Connor, the Court affirmed the summary judgment in favor of Allstate.

In the instant case, Allstate does not seriously contend that Toreshwar Nauth was sane, nor doesd Allstate assert that Toreshwar Nauth was capable of intent at the time of PRASAD's injuries. Allstate has accepted Toreshwar Nauth's condition as true. Allstate does not mention Toreshwar Nauth's intent, nor that all of the psychiatrists have found Toreshwar Nauth insane at the time of the offense, and not capable of forming any intent. Allstate tries to ignore the on-point holdings in Northland, supra, and Arkwright, supra. Allstate prefers to cite inapplicable cases to the Court, which stand for the proposition that sane people who commit intentional acts must

stand liable and alone without indemnification from their insurance policies. Renuka Prasad does not contest this proposition, but would state that it has no application to his case.

On the issue of the intentional or criminal act exclusion, Allstate also cites Allstate v. Travers, 703 F.Supp. 911 (N.D., Fla. 1988) and Allstate v. S.L., 704 F. Supp. 1059 (S.D., Fla. 1989). PRASAD would also cite Landis v. Allstate, 516 So.2d 305 (Fla. 2d DCA, 1978) and McCullough v. Central Florida YMCA, 523 So.2d 1208 (Fla. 5th DCA 1988). This line of cases deal with child molesters occasioning injury to their child victim. Once again, the issue is discussed concisely by Judge Cowart in McCullough, that:

> It is now well understood that the specific intent of the classic child molester is to do an act to gratify his own warped sexual desires. If before his act the molester thinks at all about the possible effect his act has upon the child, he normally rationalizes that his act will not cause bodily injury or other harm to the child. In any event insurance coverage does not depend on the child molester's 'specific intent' to do or not to do bodiliy injury to the child. Regardless of the molester's subjective speculations, expectation or intent to cause, or not to cause bodily injury to a molested child, an intentional act of child molestation of a criminal character is not an accident.

Landis, also a child molester case, involved "clearly intentional or deliberate acts by the insured" (at page 307). Once again Plaintiff's reliance is based upon cases where the insured's intent was not at issue or in question. Allstate v. S.L., supra, involved damages resulting from sexual

molestation of a minor female. It was offered that the insured suffered from pedophilia and therefore that the insured did not actually intend to harm the abused girl. The District Court of the Southern District of Florida reasoned that the insured's actions were intended by him, therefore a reasonable person could view as foreseeable the results and harm resulting from those acts. Defendant, Renuka Prasad, would adopt this opinion also with approval. A pedophile is not an insane person. A pedophile exercises intent every time he commits a crime upon young children. These acts by a pedophile are by definition intentional. Toreshwar Nauth, in the instant case, committed no intentional act, and Toreshwar Nauth did not know what he was doing nor could not forsee the unforeseeable.

Allstate finally, but cursorily, addresses the insanity of Toreshwar Nauth. Allstate cites once again the Landis sexual molestation case which does not, in any fashion, address insanity, but rather an assertion by the accused that although there was an intent to commit pedophilia, there was no intent to harm. The objective test asserted in Landis stems from the foreseeable result of intentional actions. Once the acts are intentional, whether they are reasonably expected becomes at issue but not until then. It is, however, Allstate Ins. Co. v. Cruse, 734 F.Supp. 1574 (MD., Fla., 1989), which requires the most attention. Firstly, Cruse was NOT FOUND to be criminally insane by the Court. In the

instant case Toreshwar Nauth WAS FOUND to be legally insane. Further, in Cruse, Judge Fawsett recites essential facts leading to her conclusions, which facts are omitted by Allstate in the case at bar:

> "In the instant case Mr. Cruse unquestioningly took his gun, pointed it at numerous strangers and pressed the trigger. He also took hostages. Mr. Cruse's admission that he wanted to scare the victims indicates that he intended some harm to them. The fact that the harm was greater than he intended does not warrant coverage under the policy." (at 1581)
>
> Judge Fawsett went on to rule that:
> "This Court further finds that the intentional acts exclusion at issue in this case requires the Court to apply an objective standard to Mr. Cruse's intentional acts." (at 1581)

In the instant case, Toreshwar Nauth had no intent to scare, kill, hurt, or commit any act on Renuka Prasad. Psychiatrists found Toreshwar Nauth to be legally insane. The Criminal Court affirmed that conclusion.

In Cruse, the Middle District Court did not address the Criminal Act exclusion. In Cruse, once again, Cruse murdered several individuals and was convicted of those murders. In the case at bar, Nauth's criminal cases will be or have been dismissed based upon the Defendant's complete lack of sanity, i.e., lack of intent.

Therefore, as a matter of law, since in Cruse, Cruse possessed sufficient intent to be aware of what he was doing, of intending to scare people and of why he wanted hostages, the subjective intent of Cruse of whether the actual injuries

which stemmed from his actions were foreseeable is irrelevant. The objective test is properly applied upon a showing of intent by the actor to do some act where the natural flow and loss from that act is foreseeable.

Allstate once again discusses S.L., supra, and Allstate v. Talbot, 690 F.Supp. 886 (N.D. Cal. 1988), both sexual molestation cases. Once again, this Court can distinguish pedophilia from insanity. Allstate's argument is not relevant to the intent issue. Florida law is clear and has not been reversed on this significant point - a person found to be incapable of forming intent is not excluded from coverage as a result of unintentional acts or unforeseeable losses occasioned by his behavior. See authorities, supra.

Allstate argues the Criminal Acts exclusion as well, in its Memorandum of Law. Allstate seems to hurry over the requirement for this exclusion that the damage must reasonably be expected to result from the intentional or criminal act of an insured. Toreshwar Nauth's actions were not intentional, and his actions were viewed as non-criminal by the Circuit Court. Therefore, this criminal acts exclusion is clearly inapplicable to Renuka Prasad's claim.

The pleadings clearly allege that Toreshwar Nauth was insane at the time of the event and also at trial time. He could not form intent. He cannot be guilty of a criminal act.

Once again Allstate uses an intentional act case of Uniguard Mutual Ins. v. Argonaut Ins., 579 P.2d 1015, (Div. 2

Wash. App. 1978) for support. In Uniguard, the 11 year old William Winkler broke into a school building and intentionally set fire to the contents of a trash can, knowing what he was doing. The fire soon burned out of control, and beyond what was expected by William, and he even tried to douse the fire. William testified that although he intended the fire, he did not intend to burn the school down. He also testified that he knew that fires could spread. The Court discussed what the term 'accident' meant. "The term accident is now present where a deliberate act is performed." The means and the result must be unforeseen, involuntary, unexpected and unusual. William intended the fire, that was undisputed. Cruse knew he had a gun, knew he was using the gun. Toreshwar Nauth knew nothing other than what he was told he had done afterwards when he was stabalized with medication. Toreshwar Nauth was insane and incapable of any intent. The exclusion in Unigard was reasonably applied, as it was in Cruse. Renuka Prasad's case is totally distinguishable due to a total lack of intent on Toreshwar Nauth's part, and therefore the intentional and criminal acts exclusions do not apply.

Allstate cannot rely on child molestor cases, gunshot cases and other cases of volitional acts to exclude coverage to Toreshwar Nauth and Chandra Palat. It is alleged that Toreshwar Nauth was so far out of control mentally that he had no intent even to move his body as he did and had no knowledge that he was doing it, nor memory of it. This is more than not

intending specific harm. This is not having any intent at all. If there is no control, the act is not intentional or criminal and coverage applies. This is a scenario in which coverage applies, and in which Toreshwar Nauth's actions do not constitute "intentional or criminal acts". Consequently, a Motion for Judgment on the Pleadings is not applicable.

Since there are no intentional or criminal acts, inquiry need be made into whether the injuries were reasonably expected from intentional or criminal acts. But even if by some stretch of the imagination Toreshwar Nauth can be said to have acted intentionally or criminally, it is not reasonably expected that a failure of Toreshwar Nauth to take his medicine would result in a vicious stabbing.

CONCLUSION

Allstate seeks to avoid paying losses caused by the negligence of two insureds by trying to define accident and intent in as narrow a way as possible, to exclude coverage for the insured.

The rules of construction are clear. The Motion for Judgment on the Pleadings is inappropriate. Two people made mistakes on February 26, 1989. Chandra Palat kept her son's condition secret, and failed to control him, though he was dangerously insane and she failed also to warn Renuka Prasad, both negligent acts were in violation of her common law duty of care required in harboring insane people. Toreshwar Nauth failed to take his medicine, totally lost control and decompensated dramatically in dangeorus insanity.

Under the Complaint for Declaratory Judgment and the insurance policy applicable thereto, there were and are factual scenarios which would provide coverage for the acts complained of. There is clearly lawful coverage for the insureds. The actions of Toreshwar Nauth and Chandra Palat broadly construed constitute accidents under the terms of the policy therefore bringing the actions under the terms of coverage. Additionally, the intentional or criminal act defense is not appropriate herein because Toreshwar Nauth totally lacked volition to act and could form no intent, and the criminal prosecution was abated due to his insanity. Consequently, the intentional act exclusion does not apply.

Renuka Prasad respectfully requests that the certified questions from the Eleventh Circuit be answered as follows:

1. That under Florida law, the injuries to Renuka Prasad fall within the definition of "accident";
2. That the intentional acts exclusion is inapplicable to Renuka Prasad's case, as Toreshwar Nauth was incapable of forming intent due to his insanity, and
3. That the criminal acts exclusion does not apply as the criminal prosecution of Toreshwar Nauth was dismissed as a result of his insanity.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished by U.S. Mail this 13th day of July, 1993 to: DAVID B. SHELTON, ESQUIRE, Attorney for Allstate, P.O. Box 1873, Orlando, Florida 32802; SHARON STEDMAN, ESQUIRE, Attorney for Allstate, 1516 East Hillcrest Street, Suite 200, Orlando, Florida 32803; and to H. SCOTT GOLD, ESQUIRE, 703 East Pine Street, Orlando, Florida 32801.

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