

VIRGINIA SUPREME COURT RULING TAKES POLICY INTERPRETATION BEYOND “EIGHT CORNERS” OF THE COMPLAINT AND POLICY

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In the April, 2010 case *Copp v. Nationwide Mut. Ins. Co.*, 279 Va. 675, 692 S.Ed. 2d 220 (Va. 2010), the Virginia Supreme Court held that facts outside the “eight corners” of the complaint and policy may be considered when evaluating whether an exception to a policy exclusion applies. The Court held that the protection of person or property exception to intentional acts exclusion applied to an altercation involving the insured, who asserted self-defense. The Court reversed the circuit court ruling which had determined, based only on the complaint and policy language, that the insurer was not responsible for coverage.

Adam Copp was a Virginia Tech student playing beer pong in his apartment one night with his roommate. *Copp*, 692 S.E. 2d. at 222. Two men unknown to them walked by and joined their game. The situation deteriorated quickly into a profanity laced tirade, with Copp eventually physically escorting one of the men, Duggar, out of the apartment. *Id.* The yelling attracted the attention of people living upstairs who came down to see what was happening. When Copp reemerged from his apartment to try to get Duggar to leave, he was confronted by a crowd of people. *Id.* As Copp tried to approach Duggar, the group pinned him against the stairwell and, feeling outnumbered, Copp swung his arm out over the the crowd and struck Gregory Jacobson. *Id.* Jacobson was knocked unconscious and his orbital socket was fractured, requiring surgery on two occasions. *Id.* Copp was charged with assault and battery under Code § 18.2-57 and entered a plea of no contest. *Id.* at 22-223.

At the time of the incident Copp was an insured under a homeowner’s policy and an umbrella policy issued by Nationwide to Copp’s parents. *Id.* at 221. The umbrella policy contained a clause excluding liability for personal injury arising out of willful violation of a law, however the clause specifically provided that “it does not apply to bodily injury or property damage caused by an insured trying to protect person or property.” *Id.* at 222.

Jacobson filed for declaratory judgment with claims for compensatory damages and punitive damages for assault and battery. Nationwide, arguing the “eight corners rule” claimed it did not have a duty to defend or owe coverage for any intentional acts because they “cannot be considered an accident or accidental under the terms of the policies.” *Id.* at 223. The Court acknowledged prior decisions where they have applied the rule that, “only allegations in the complaint and the provisions of the insurance policy are to be considered in deciding whether there is a duty on the part of the insurer to defend and indemnify the insured.” *Id.* at 224, *citing Brenner v. Lawyers Title Insurance Corp.*, 240 Va. 185, 189, 192, 397 S.E. 2d 100, 102, 104 (1990)(citations omitted).

The Court stated though that none of those decisions involved the type of situation here, where the policy at issue included an exception to the exclusion of coverage. “The exception is found in one of the four corners of the insurance contract and stands on equal footing with other provisions thereof.” *Id.* at 225. When considering Copp’s examination under oath and deposition testimony, “Copp’s version of events is not inherently incredible, and Nationwide does not contend that it is.” The trier of fact might find for or against Copp, but, “the fact that the latter result might occur does not negate Nationwide’s duty to defend in the first instance.” *Id.* See *Virginia Elec. & Power Co. v. Northbrook Property & Cas. Co.*, 252 Va. at 269, 475 S.E. 2d. Ultimately, “[w]hether Copp’s acts were or were not caused by his trying to protect person or property must be left to the fact-finder in the subsequent trial of the underlying tort action.” *Id.*