

## **Insurance Coverage: Liability Through Homeowners Policy**

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Today, parents and their homeowner's insurance policy carrier can be held liable for an adult child's intentional violent crimes. For example, a parent owns a gun, keeps it in the family home, and their child has easy access to the gun. One day when the parents are not home, the adult child gets the gun and goes out and commits a murder. As a result, the adult child is convicted of the murder. The family of the victim brings a lawsuit against the parents and their insurance carrier that issued their homeowner's policy for negligence.

The Supreme Court of Pennsylvania in *Dongel v. Baumhammers et al.* has recently indicated that, under a homeowners insurance policy, the insurance carrier could be required to defend the parents of an adult child that has committed intentional violent crimes. In *Dongel*, an adult child, leaves his home and proceeds to shoot and kill five individuals and seriously injures a sixth, from four different counties within a two hour time period. The adult child is convicted of first-degree murder with respect to the five victims who had died, and is also convicted of aggravated assault and attempted homicide of the sixth victim. The families of the five murder victims and the surviving victim file a civil complaint against the parents. The complaint alleges that the parents acted negligently by (1) failing to obtain mental health treatment for their son, (2) failing to take the gun away from their son, and (3) failing to notify the authorities that their son possessed a handgun.

Under Pennsylvania Law, an insurance carrier must defend an insured if the allegations set forth in a plaintiff's complaint triggers coverage under the policy. The Supreme Court in *Dongel* needed to determine if the alleged negligence of the parents and the resulting injuries qualified as an accident. The test of whether the injury was the result of an accident is determined from the viewpoint of the parents and not from the viewpoint of the adult child. The court determined that "plaintiffs injuries were caused by an event so unexpected, undersigned and fortuitous as to qualify as accidental." Due to the above-mentioned alleged negligence of the parents, which resulted in the tragic death and injuries of the plaintiffs, the insurance carrier was required to defend the parents.

The Supreme Court also determined in *Dongel* that the injuries to the plaintiffs constituted one occurrence thereby limiting the amount of recovery to \$300,000. The Supreme Court identified two competing approaches for determining the number of occurrences: (1) the "cause" approach, and (2) the "effects" approach. The Supreme Court adopted the "cause" approach in which a court is to consider whether there is a single cause or multiple causes for the losses sustained. The Supreme Court relied on a Nevada Court's reasoning in *Washoe County v. Transcontinental Ins. Co.* which stated "the focus of the inquiry should not be the number, magnitude, or time of injuries, but rather on the cause of the injury." The parents alleged negligence in failing to remove the gun from the adult child or alerting authorities of his dangerous propensities was the occurrence that began the sequence of events that resulted in the injuries to plaintiffs.

As a result of the Supreme Court's decision, plaintiffs need to prove that the parents were negligent as set forth in their complaint to receive monetary damages. Additionally, if the plaintiffs were able to provide evidence to support such allegations, the most the plaintiffs would be permitted to recover would be \$300,000.00. The Supreme Court limited the amount of the liability coverage to the one occurrence and for the policy limit of \$300,000.00.

It is important for all carriers to provide the clients with complete and unambiguous policies to prevent the scenario identified above from requiring a duty to defend. Additionally,

parents need to understand the importance of keeping guns under their control and supervision.