



The Kentucky Supreme Court recently decided *Foreman v. Auto Club Property Casualty Insurance Company* which addressed an intentional acts exclusion in a homeowners policy. Tom Glassman of our firm was successful amicus curiae counsel for the Insurance Institute of Kentucky.

The case stemmed from an incident involving the 16 year old son of the Auto Club's insured. The son attempted suicide by setting fire to the family home shortly after he was released from a psychiatric hospital. The issue was whether the intentional acts exclusion applied due to his mental illness. The policy excluded "any action by or at the direction of an insured person committed with the intent to cause a loss, or that could be reasonably expected to cause a loss."

The trial court relied on the reasonable expectations doctrine and viewed the loss and intent from the son's perspective. It found he lacked the mental capacity to form the intent to damage the home. The Court of Appeals and the Kentucky Supreme Court disagreed, applying an objective standard to the exclusion. The Supreme Court found the policy unambiguously excluded coverage for acts judged objectively which could reasonably be expected by the insured to cause a loss. They also noted intent can be proven either by actual intent or it can be inferred by the nature of the act in question and the reasonable foreseeability of harm. In order for a mental illness exception to the exclusion to apply, the insured must prove the actor "did not understand the nature and quality of his actions so that he was rendered unable to understand the physical nature of their consequences."

The Supreme Court remanded the case to the trial court, noting a mental incapacity defense remained viable, although the insured would be required "to show at the time of the act, not just that the insured did not know right from wrong but that he did not understand the nature and quality of his actions so that he was rendered unable to understand the physical nature of their consequences," which the court indicated was a "high burden" to defeat the exclusion.

This decision requires the exclusion to be applied the way it was intended, which in this case was to use a reasonable person standard to offset any defense of mental illness. Although the Supreme Court noted the door remained open for a mental illness defense, the insureds must prove their son did not understand that soaking the couch in gasoline and lighting a match would cause a fire and that fire would damage the home.

Click here to read the decision in its entirety: <https://appellatepublic.kycourts.net/api/api/v1/publicaccessdocuments/a669eb4785fad5b899ef39dc079fe071b4a6dff3af494ceb8227d6dea947aa31/download>

If you have any questions about the decision or its impact, please feel free to contact Tom at 513.345.5502 or at tglassman@bsphlaw.com.

