

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

ALLSTATE INSURANCE COMPANY,	:	JUNE TERM, 2004
	:	
Plaintiff,	:	NO. 01580
	:	
v.	:	COMMERCE PROGRAM
	:	
DEREK KEOUGH, EDWARD ANDERSON,	:	Control No. 121255
JR., and GUNBOAT, INC.,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 10th day of March, 2005, upon consideration of plaintiff's Motion for Summary Judgment, the response thereto, the briefs in support and opposition, and all other matters of record, it is hereby **ORDERED** that said Motion seeking declaratory relief is **GRANTED**, and plaintiff has no duty to defend or indemnify defendants in the action filed in the Court of Common Pleas for Philadelphia County at docket number 00685, January Term 2004.

BY THE COURT:

C. DARNELL JONES, II, J.

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MEMORANDUM OPINION

In a separate action, defendant Edward Anderson brought suit against Defendant Derek Keough and defendant Gunboat, Inc. (“Gunboat”) for injuries Anderson alleged sustained as a result of an assault on him by Keough on Gunboat’s premises (the “Underlying Action”). Keough was previously convicted of the crimes of simple assault and recklessly endangering another person in connection with his assault on Anderson. Plaintiff Allstate Insurance Company (“Allstate”) is Keough’s insurer under a certain homeowner’s policy (the “Policy”). In this declaratory judgment action, Allstate has moved for summary judgment that it has no obligation under the Policy to defend or indemnify Keough.

“A court’s first step in a declaratory judgment action concerning insurance coverage is to determine the scope of the policy’s coverage.” General Accident Insurance Co of America v. Allen, 547 Pa. 693, 706, 692 A.2d 1089, 1095 (1997). In this case, the Policy covers damages for “bodily injury” caused by “an accident.” See Complaint, Ex. A, pp. 3, 21. The Policy further provides that Allstate does

not cover any bodily injury or property damage intended by, or which may reasonably be expected to result from, the intentional or criminal acts or

omissions of any insured person. . . This exclusion applies regardless or whether or not such insured is actually charged with, or convicted of, a crime.

Id. p. 22.

“After determining the scope of coverage, the court must examine the complaint in the underlying action to ascertain if it triggers coverage. If the complaint against the insured avers facts that would support a recovery covered by the policy, then coverage is triggered and the insurer has a duty to defend until such time that the claim is confined to a recovery that the policy does not cover.” General Accident, 547 Pa. at 706, 692 A.2d at 1095. In the Complaint in the Underlying Action, Anderson asserts a claim against Keough for “negligently striking” Anderson on Gunboat’s premises. *See* Complaint, Ex. B, ¶¶ 13, 23. However, the Complaint is based upon the same conduct that another court has previously found to be criminal. *See* Motion for Summary Judgment, Ex. B, Criminal Conviction. “The particular cause of action that a complainant pleads is not determinative of whether coverage has been triggered. . . . [T]o allow the manner in which the complainant frames the request for redress to control in a case such as this one would encourage litigation through the artful use of pleadings designed to avoid exclusions in liability insurance policies.” Mutual Benefit Ins. Co. v. Haver, 555 Pa. 534, 538-9, 725 A.2d 743, 745 (1999).

In determining whether coverage exists, the relevant inquiry is whether the alleged “harm is of a generally different type than that which [Anderson] set out to cause.” *See* United Services Auto. Assoc. v. Elitzky, 358 Pa. Super. 362, 373, 517 A.2d 982, 988 (1986) (“An insured intends an injury if he desired to cause the consequences of his act or if he acted knowing that such consequences were substantially certain to result.”) In this case, Keough testified that “I pushed him. I threw him to the ground.” *See* Motion for Summary Judgment, Ex. B, Keough Deposition, pp. 62, 69-70. Clearly, Keough’s assault upon Anderson was intentional, and, just as

clearly, Keough knew that bodily injury was “substantially certain to result” from that assault. *See Erie Ins. Exch. v. Fidler*, 808 A.2d 587, 590 (Pa. Super. 2002) (where “appellants sought coverage of damages allegedly caused when [defendant] threw [plaintiff] against a wall and into a desk . . . [the court held] that this was intentional conduct as a matter of law” even though the underlying complaint asserted a claim for negligence.) Therefore, under the express terms of the Policy, Allstate need not provide Keough with a defense or indemnification in the Underlying Action in which Anderson is attempting to recover for personal injuries resulting from Keough’s assault.

CONCLUSION

For all the foregoing reasons, plaintiff’s Motion for Summary Judgment is granted, and the court will issue a declaratory judgment in plaintiff’s favor.

BY THE COURT:

C. DARNELL JONES, II, J.