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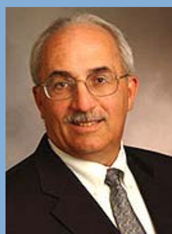

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New Jersey Supreme Court Rules on Intentional Injury Exclusion of Workers' Compensation Policy

On December 4, 2006, the New Jersey Supreme Court decided Charles Beseler Co. v. O'Gorman & Young, Inc., No. A-75-05, and New Jersey Manufacturers Ins. Co. v. Delta Plastics Corp., No. A-87-05, each of which involved the application of Exclusion C.5 of the employers liability coverage part of a workers' compensation policy to claims that alleged that the employer knew that the consequences of its actions were substantially certain to result in injury to the injured employee. In each case, the Supreme Court held that Exclusion C.5 ("bodily injury intentionally caused or aggravated by you;") was ambiguous and did not apply to exclude a duty to defend or indemnify on the part of the workers' compensation insurer.

In Charles Beseler Co., the Supreme Court held that the exclusive remedy provision of the Workers' Compensation Act does not apply when the employer commits an "intentional wrong." Relying on its decision in Laidlow v. Hariton Mach. Co., Inc., 170 N.J. 602 (2002), the Supreme Court then noted that there were two ways that an employee could establish that an employer had committed an "intentional wrong." First, the employee could allege and establish that the employer had acted "with a subjective desire to harm." Second, the employee could allege that the employer knew "that the consequences of…[his] acts are substantially certain to result in such harm." Charles Beseler Co., supra, slip op. at 6 (quoting Laidlow, supra, 170 N.J. at 613). The Court then held that Exclusion C.5 was ambiguous when it was applied to a case in which the allegations were that the employer had acted with a substantial certainty that its conduct would result in harm. Charles Beseler Co., supra, slip op. at 8. Because of that ambiguity and the doctrine of reasonable expectations, the Court determined that the exclusion was inapplicable.

Delta Plastics Corp. involved similar facts and the same policy provision. The Court reached the same conclusion as it did in Charles Beseler Co. based on the same reasoning.

Significantly, the Court did not in the text of either Charles Beseler Co. or Delta Plastics Corp., address the potential applicability of a 1995 Appellate Division decision, New Jersey Mfrs. Ins. Co. v. Joseph Oat Corp., 287 N.J. Super. 190 (App. Div.), certif. denied, 142 N.J. 515 (1995) ("Joseph Oat"), that reached a contrary conclusion and held that Exclusion C.5 was applicable to allegations similar to those involved in the subject cases.

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However, in footnote 2 in Charles Beseler Co., the Court simply remarked that it was aware that "the C.5. exclusion had been interpreted otherwise" in Joseph Oat and that the decision there was "inconsistent with the reasoning of our holding today." While not expressly overruling Joseph Oat, the decisions in Charles Beseler Co. and Delta Plastics Corp. make it clear that the decision can no longer be relied on to argue that Exclusion C.5 applies to allegations that an employer knew its actions were "substantially certain" to harm the employee.

In summary, Exclusion C.5 does not exclude coverage of an unintended injury caused by an intentional wrong.

If you would like further information about the two Supreme Court decisions addressed herein or information regarding Exclusion C.5 generally, please contact us.