

**BLOGS**

Law Enforcement Liability

The Intentional Acts Exclusion and Police Brutality

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Personal injury or property damage resulting from an act or omission intended or expected from the standpoint of any insured to cause personal injury or property damage. This exclusion applies even if the personal injury or property damage is of a different kind or degree, or is sustained by a different person or property than that intended or expected. This exclusion shall not apply to personal injury resulting from the use of reasonable force to protect persons or property, or in the performance of a duty of the insured.

The intentional acts exclusion is commonly invoked by insurers seeking to deny coverage when a police officer’s intentional acts have caused damage giving rise to the claim, such as the shooting of unarmed civilians or when an officer uses excessive force during an arrest or detention. For the exclusion to apply, insurers must prove both that: (1) the act was intentional; and (2) there was intent to cause injury. Most courts agree that under such a provision, the act must have been intended from the standpoint of the insured. However, courts are split on the level of intent necessary.

With the numerous instances of police misconduct gaining national attention recently, states across the country are looking for ways to limit police misconduct and to fund resulting civil lawsuits against their police departments. Excessive force and police misconduct claims are most often litigated in the civil rights context. Under *Monell v. Department of Social Services of the City of New York* and its progeny, a municipality can be held liable for a civil rights violation when the violation results from a policy, practice, or custom of the municipality, or when a decision-maker is directly involved in the misconduct. With respect to these *Monell* cases, courts are split on whether excessive force claims are covered under insurance liability policies that contain the “intentional acts exclusion.” For example, New York is one of many jurisdictions that bars an insurer from denying coverage pursuant to the intentional acts exclusion, even if a plaintiff alleges in the complaint that the officers intended to commit a wrongful act. In contrast,

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Minnesota has held that the intentional acts exclusion bars coverage when the substantive conduct alleged was undeniably connected to the conduct resulting in injury.

Additionally, there is a key exception to the intentional acts exclusion often contained in police liability policies: if the conduct was the result of the use of reasonable force. At least one court addressing whether this exception applies found that public policy would be contravened if an insurer could deny coverage for a claim of "bodily injury caused by conduct carried out with reasonable force in self-defense or defense of another in light of the language of the exception to the expected or intended injury exclusion." Likewise, another court addressing this issue found that the reasonable force exception applied when the officer's conduct in securing property against the actions of an unruly and intoxicated bar customer was "reasonable" and that the officer's conduct in using force was potentially in self-defense, which triggered the insurer's duty to defend. Although this exception to the intentional acts exclusion has not been heavily litigated in the civil rights or police brutality context, it is likely to apply where the officer alleges reasonable force under the circumstances or self-defense.

In summary, the intentional acts exclusion is not an easy escape for insurers wanting to deny coverage for excessive force or similar claims simply because a plaintiff alleges intentional conduct. This is especially true when the exclusion contains a reasonable force exception or when public policy dictates that an insurer cannot deny coverage when the insured acted in self-defense or with reasonable force. With more police shootings and serious injuries or deaths being reported during the arrest process, courts will undoubtedly be required to interpret and apply the intentional acts exclusions and the reasonable force exception in cases of police misconduct soon.