WISCONSIN SUPREME COURT
TUESDAY, OCTOBER 23, 2012
9:45 a.m.

This is a review of a decision of the Wisconsin Court of Appeals, District II (headquartered in Waukesha), which reversed a Washington County Circuit Court decision, Judge James G. Pouros, presiding.

2011AP564 Schinner v. Gundrum

This case examines the meaning of "occurrence" and "accident" under the terms of a homeowners insurance policy and how they apply to the facts presented here. The Supreme Court is asked to review whether a homeowners insurance policy covers the 21-year-old host of a drinking party who provided alcohol to an underage guest who assaulted another guest.

Some background: Marshall Schinner filed a lawsuit alleging that he sustained serious injuries after being assaulted by Matthew Cecil. Cecil was a guest at a party hosted by Michael Gundrum in a shed on Gundrum's parent's business property. The shed was used in part to store personal property, including snowmobiles that were explicitly listed in a West Bend Insurance Co. homeowner's policy.

Cecil, who was under the legal drinking age at the time, became belligerent and assaulted Schinner during the party. The parties agree that Cecil's assault on Schinner was intentional and that Schinner's injuries did not result from inadvertent or merely reckless conduct by Cecil. The parties also agree there is no allegation that Gundrum personally participated in or assisted Cecil in the assault.

Schinner sued Gundrum for negligence, alleging that Gundrum's conduct, which included providing alcohol to Cecil, was a cause of the assault and Schinner's resulting injuries. West Bend was added to the suit. West Bend moved for summary judgment, arguing it should be dismissed from the case because there was no "accident," and therefore no "occurrence" under the policy.

The circuit court agreed with West Bend and dismissed it from the case. The circuit court explained, "Based on the undisputed facts in this case, there is simply no 'occurrence.' ... There is no allegation of any accidental conduct. The acts of Cecil are intentional acts – punching Schinner twice and kicking Schinner in the head. Further, any acts on the part of Michael Gundrum were intentional, namely his providing of alcoholic beverages to underaged persons."

The circuit court also agreed with West Bend's alternate argument that the homeowner's policy was inapplicable because the injury to Schinner did not occur at an insured location. Schinner appealed, and the Court of Appeals reversed and remanded.

The Court of Appeals said the primary issue presented was whether there was an "occurrence" for purposes of coverage. While the West Bend policy does not define the term "accident," the Court of Appeals noted that prior cases have defined the term as an event which takes place without one's foresight or expectation. The Court of Appeals agreed with Schinner that the assault was an "accident" from Gundrum's standpoint as well as from Schinner's standpoint.

West Bend says a decision from this court would resolve an apparent conflict in previous appellate court decisions and provide needed guidance on the proper analysis for Wisconsin

courts to employ when determining whether an assault constitutes an “occurrence” under a homeowner’s liability insurance policy.