

[J-157-2003]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

MINNESOTA FIRE AND CASUALTY COMPANY,	:	No. 68 MAP 2003
	:	
Appellee	:	Appeal from the Order of the Superior Court entered August 9, 2002 at No. 651MDA2001 which Reversed and Remanded the Judgment of the Cumberland County Court of Common Pleas, Civil Division, entered March 14, 2001 at No. 00-3886-EQUITY
v.	:	
MICHAEL J. GREENFIELD, SHARON SMITH AND ARLIN C. SMITH, INDIVIDUALLY AND AS ADMINISTRATORS OF THE ESTATE OF ANGELA C. SMITH,	:	ARGUED: December 2, 2003
	:	
Appellants	:	

DISSENTING OPINION

MR. CHIEF JUSTICE CAPPY

Decided: August 19, 2004

Because I cannot agree with the majority's decision to rewrite the insurance policy at issue, I must respectfully dissent.

We are not here confronted with the question of whether an insurer may enforce an exclusion which excludes from coverage damages arising out of the sale of heroin or any other illegal drug. Rather, at issue is whether this court may insert, via the invocation of public policy, such an exclusion into an insurance policy. The majority finds that this court may rewrite the contract on the basis that an insured should be

precluded from receiving coverage where damages result from the insured's criminal act.

In my opinion, this court should not rewrite the contract for the insurance company. The Minnesota Fire and Casualty Company drafted the insurance policy. It is beyond cavil that it was capable of writing an exclusion which would exempt from coverage damages arising out of the sale of illegal narcotics, and yet it did not do so. Arguably, this was a failing on the part of the insurance company. Yet, is it the role of this court to act as super-scrivener, correcting the apparent errors in business judgment committed by insurers? With all due respect to the majority, I submit that this is not a proper role for this body.

Furthermore, I am concerned about the potential sweeping reach of the majority's decision and have grave concerns about its application to future cases. While the majority purports to limit its public policy exception to situations in which an insured engages in illegal activity regarding Schedule I controlled substances, its underlying rationale for creating that limited exception could easily be extended to create exceptions for other illegal acts. Indeed, the majority suggests in a footnote that this court should not require an insurance company to reimburse a policyholder for damages arising from any "conduct . . . that our legislature has defined as illegal." Maj. Op. at 21 n.12. I am uneasy about this court issuing such a broad and amorphous pronouncement.

For the foregoing reasons, I respectfully dissent.

Mr. Justice Nigro joins this dissenting opinion.