

[J-163-1998]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

MUTUAL BENEFIT INSURANCE COMPANY,	:	No. 21 W.D. Appeal Docket 1998
	:	
Appellant	:	Appeal from the Order of the Superior Court at No. 2251PGH96 entered September 9, 1997, affirming in part and reversing in part the Order of the Court of Common Pleas of Jefferson County, Civil Division, at No. 310-1994 C.D.
v.	:	
JOSEPH B. HAVER T/A HAVER PHARMACY, JOHN MACKO AND CANDACE M. MACKO, HIS WIFE,	:	
	:	
Appellees	:	ARGUED: September 15, 1998
	:	

CONCURRING OPINION

MR. JUSTICE NIGRO

DECIDED: March 5, 1999

I join the Majority since I fully agree that Haver's conduct, as alleged in the Mackos' complaint, falls within the "knowing endangerment" exclusion contained in the insurance policy, and therefore, that Mutual Benefit has no duty to either defend or to indemnify Haver. The Mackos' complaint essentially alleges that Haver supplied Candace Macko with dangerous and addictive drugs, without prescription, despite knowledge of her addiction and requests by her family and physician to stop. As the Majority concludes, these allegations constitute allegations of "knowing endangerment."

I write separately, however, to note that previous to the filing of the Mackos' lawsuit, Haver pled guilty to federal criminal charges of "knowingly, intentionally, and unlawfully" distributing controlled substances to Candace Macko under 21 U.S.C. § 841(a)(1). While outside the four corners of the complaint, this guilty plea to intentional and knowing actions clearly demonstrates, in my view, that Haver's conduct knowingly endangered Candace

Macko. In light of Haver's guilty plea, I find Appellees' argument that the allegations in the Mackos' complaint are allegations of negligence, rather than intentional or knowing conduct, completely disingenuous. The circumstances in this case simply do not support Appellees' attempt to paint the complaint as one that alleges negligence, so as to place it within the policy's coverage .

Madame Justice Newman joins in the concurring opinion.