

SUPREME COURT PENDING CASE

The following appeal is fully briefed and eligible for assignment by the Supreme Court in the near future.

ALLSTATE INSURANCE COMPANY *v.* DONTE TENN et al., SC 20586
United States District Court for the District of Connecticut

Insurance; Whether Nolo Contendere Plea and Resulting Conviction Can Be Used to Trigger Criminal Acts Exclusion in Homeowner's Insurance Policy. Donte Tenn allegedly struck Tailan Moscaritolo with a baseball bat, causing Moscaritolo to suffer serious head injuries. The alleged attack took place in Middletown, Connecticut. Tenn was arrested and subsequently pleaded nolo contendere to the charge of assault in the first degree. Moscaritolo then brought suit against Tenn in Connecticut Superior Court, alleging claims of assault, negligent assault, intentional infliction of emotional distress, and negligent infliction of emotional distress. At the time of the alleged attack, Tenn was covered by a homeowner's insurance policy issued by Allstate Insurance Company (Allstate) to his mother. The policy covered "bodily injury" caused by an "occurrence" and defined "occurrence" to mean an "accident." The policy also contained an intentional or criminal acts exclusion clause, which excludes coverage for "bodily injury" which "may reasonably be expected to result from the intentional or criminal acts of the insured person . . . regardless of whether or not such insured person is actually charged with, or convicted of a crime." Allstate brought this action against Tenn and Moscaritolo in the United States District Court for the District of Connecticut (District Court), seeking a declaratory judgment that it owes no duty to defend Tenn in the underlying state civil suit. Allstate filed a motion for summary judgment, claiming, inter alia, that Tenn was precluded from coverage because his actions did not constitute an "occurrence" or, alternatively, because they fell within the intentional or criminal acts exclusion clause. The District Court denied the motion for summary judgment to the extent that it was based on those grounds. The court, however, reserved decision on Allstate's remaining claim that Tenn's nolo contendere plea to the criminal assault charge triggered the criminal acts exclusion clause, thereby precluding Tenn from coverage. With respect to that claim, the District Court noted that, under Connecticut law, a nolo contendere plea may not be used in "subsequent civil action[s] or administrative proceeding[s] to establish either an admission of guilt or the fact of criminal conduct," quoting *Groton v. United Steelworkers of America*, 254 Conn. 35, 51 (2000). On the other hand, the court noted that a nolo contendere plea may result in collat-

eral consequences, such as loss of parental custody or a violation of probation, based on the existence of the conviction itself regardless of the defendant's underlying conduct. It further noted that, according to Allstate, preclusion of coverage under a homeowner's insurance policy's criminal acts exclusion clause is another collateral consequence of a nolo contendere plea. The District Court, however, found that there was no authoritative Connecticut precedent addressing the impact of a nolo contendere plea on a homeowner's insurance policy's criminal acts exclusion clause. The District Court therefore certified, and the Supreme Court accepted, the following question pursuant to General Statutes § 51-199b: "Whether a plea of nolo contendere and the resulting conviction can be used to trigger a criminal acts exclusion in an insurance policy?"

The summary appearing here is not intended to represent a comprehensive statement of the facts of the case, nor an exhaustive inventory of issues raised on appeal. This summary is prepared by the Staff Attorneys' Office for the convenience of the bar. It in no way indicates the Supreme Court's view of the factual or legal aspects of the appeal.

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