resulting from liability of the insured under insurance contracts or due to an inspection, title search, or survey that was made, not made, or improperly made. Applying a prior case that held that the exclusion applied to only honest mistakes, the trial court ordered payment on the bond. The court of appeals reversed.

In holding that the exclusion was effective to prevent payment on the bond for the dishonest acts of the employee in issuing title policies, the court reasoned that the policy could not exclude what was not initially covered. Since there was no coverage for losses due to honest brokerage, an exclusion for honest mistakes was meaningless. As the court stated, exclusions must be construed to subtract from the existing broad coverage. Further, the court found that the policy continue to cover other wrongful acts such as employee theft and forgery. Thus, the policy continued to cover a significant area of risk despite the exclusion.

Coverage of Punitive Damages

Home Insurance Co. v. American Home Products Corp., 75 N.Y.S.2d 196 (N.Y. 1990).

On a question presented to it by a federal court, the New York Court of Appeals concluded that public policy would prevent insurance coverage of punitive damages arising from a strict liability claim for failure to warn. American Home Products suffered $9.2 million in compensatory damages and $13 million in punitive damages because it failed to warn of known dangers of one of its drugs. It looked to Home for coverage of the excess damages not covered by its primary insurer. Home filed suit for a declaration that it was not responsible for the punitive damages not paid by the primary insurer. The federal court presented the question to the New York Court of Appeals which agreed with the insurer.

The court stated the general policy that insurers were not responsible for indemnifying punitive damages because payment would undermine the punitive rationale. The court then determined that the facts in the product liability case warranted the application of the principle. At the trial, the jury was instructed that the evidence must show that the manufacturer showed utter indifference. The court found the instruction sufficient to warrant a similar award under New York law. Thus, the jury finding against American Home Products precluded excess coverage indemnity from Home.

Pharmacist's Duty to Warn

McKee v. American Home Products Corp., 113 Wash. 2d 701, 782 P.2d 1045 (1989).

The Washington Supreme Court affirmed a decision that a pharmacist has not duty to warn a patient receiving medicine by doctor's prescription of the effects of the drug absent special circumstances. For ten years, McKee's doctor prescribed an amphetamine as a means of weight control. The manufacturer's package insert warned that the drug was potentially addictive and that the drug should be limited to several weeks if used for weight control. McKee regularly filled the prescriptions at the same pharmacy throughout her use of the drug. The pharmacists filled the prescriptions accurately and only pursuant to doctor's orders, but they removed the package insert that contained the warnings and did not advise McKee of the potential side effects of prolonged use. McKee claimed that the pharmacists had a duty to warn her of the dangers of her long usage.

In dismissing the claims against the pharmacists, the supreme court held that a pharmacist is not obligated to interfere with doctor's instructions except in limited situations. The court concluded that the doctor is a learned intermediary who has the duty to warn. In that role, the doctor must use his independent judgment since he is in the best position to know the patient's medical history and apply it in making decisions concerning prescriptions. The court further noted that the pharmacist lacks the special education and specific facts available to the doctor to intrude on that decision. The pharmacist, however, is responsible for obvious and known dangers, such as lethal dosages or known contraindications, that would indicate that a mistake has occurred. The court concluded that this case did not meet that standard since the decision to continue the treatment was primarily judgmental.

The court also concluded that the pharmacist had no duty to provide the package insert to the patient. The court found that such a duty would place an additional burden on the pharmacist without any clear benefit. The benefit was minimal since the insert was likely to confuse and frighten the patient or disturb the treatment process. Thus, the pharmacist's duty was limited to filling the prescription accurately absent special circumstance.