2012 COVERAGE FOR DUMMIES!

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Unless indicated otherwise, our programs use “standard” policy forms and endorsements for the purposes of discussing the exposures to loss that may exist, some of the coverage options available to treat them, and to provide a framework for discussions with carriers you represent concerning the programs they have available.

Coverages, rules and materials presented during this program may differ from those used by individual insurance companies. Contact individual carriers for details about interpretations of their eligibility requirements, particular insurance contracts and rates.

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KEEP YOUR SHIRT ON!

Just the Facts:

Two female employees of a Hooters franchise sued for sexual harassment and false imprisonment. Each were individually called into the restaurant supervisor’s office and advised that a customer had reported a stolen change purse. The women were instructed to listen to a male voice on the phone, identifying himself as a police officer. They were directed to strip naked in front of the manager. The women were threatened with arrest if they did not comply. The women complied but later the calls were revealed to be a crank. The women filed suit.

Insurance Case: Hooters had purchased a General Liability policy which contained employment-related practices liability exclusion.

- **Coverage B:** The Personal & Advertising Injury coverage included coverage for “personal injury” arising out of false arrest, detention and imprisonment.
- **Endorsement:** An “employment-related practices” exclusion was added to Coverage B limiting the personal injury coverage.

2. The following exclusion is added to COVERAGE B (Section I): c. **Personal injury** arising out of any: . . . (3) Coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or other employment-related practices, policies, acts or omissions."
Cornett Management vs. Fireman’s Fund Ins. (West Virginia)

Summary Judgment:

- Seeking coverage under this policy, Cornett filed suit in state court against Fireman's Fund.

- After the case was removed to federal court, the district court granted summary judgment to Fireman's Fund, finding that the ERP exclusion applied to all claims presented in the underlying lawsuit.

- Therefore Cornett was not entitled to reimbursement for costs arising from that lawsuit.
What’s Up Doc

**Just the Facts:**

*This is a personal liability case involving a wife bringing a liability claim against her husband due to an eye injury*

- Roderick A. Vecsey and Pamela Vecsey were a married couple, residing in the same household.

- An argument erupted stemming from Mr. Vecsey’s taking issue at having to leave work to drive his daughter to a doctor’s appointment while his wife, who worked from home, could apparently have taken the daughter.

- The daughter had called her father at work and asked that he take her to the doctors stating that her mother could not take her because she apparently was intoxicated.

- Mr. Vecsey took the daughter to the doctors but upon returning home found his wife working in her home-office and perfectly capable of driving the daughter to her appointment.

- The couple began to argue, escalating into foul language being exchanged.

- Mr. Vecsey claims that he became exasperated and in frustration threw the carrot he had been eating in the direction of his wife.

- He claims to have not intentionally aimed for her, however, the carrot hit his wife in the left eye causing substantial injury.

- Pamela Vecsey suffered a ruptured globe (eyeball), broken orbital bones, massive swelling, and permanent blindness in her left eye.
**Safeco Ins. Co of America vs. Vecsey (Ct.)**

**Insurance Case:** The Vescey’s had purchased two insurance policies from Safeco. One policy was a “Quality-Plus Homeowners Policy” with a personal liability limit of $300,000 and an Umbrella Liability Policy.

**Coverage:**
Each policy contains five provisions on which Safeco relies in arguing that no coverage is due for Mrs. Vecsey’s injuries:

1. A provision that only bodily injuries resulting from an occurrence, i.e., an accident, are covered;
2. A provision requiring the insured to inform Safeco as soon as possible when a covered loss occurs or a claim is made or suit is brought against an insured;
3. An exclusion for bodily injuries arising out of abuse;
4. An exclusion for bodily injuries resulting from intended acts; and
5. An exclusion for bodily injuries resulting from violations of criminal law.

**HO Personal Liability Coverage:**
- Defines “bodily injury” to include “bodily harm, sickness or disease, including required care, loss of services and death resulting therefrom,” and
- “Occurrence” means an accident, including exposure to conditions which results in: a. bodily injury; or b. property damage; during the policy period. Repeated or continuous exposure to the same general conditions is considered to be one occurrence.

**Umbrella Policy:**
- “Personal Injury” means: a. bodily injury, sickness or disease, disability or shock including required care, loss of services and death resulting therefrom; b. mental anguish or mental injury. . .
- “Occurrence” means: a. an accident, including continuous or repeated exposure to substantially the same general harmful conditions, which results, during the coverage period, in: (1) personal injury; . . . b. an offense, committed during the coverage period, which results in personal injury.
Policy Exclusions:
Each policy contains the following exclusions:

Physical or mental abuse:
Although neither policy defines physical or mental abuse, the following exclusions are included:

- **Homeowners Policy’s** coverage for “personal liability” and “medical payments to others” expressly “do[es] not apply to bodily injury or property damage: . . . arising out of physical or mental abuse, sexual molestation or sexual harassment”

- **Umbrella Policy** states that it “does not apply” to “[a]ny personal injury arising out of sexual molestation or sexual harassment or physical or mental abuse”

Intentional Act:

- **Homeowners Policy** excludes coverage for “personal liability” and “medical payments to others” due to bodily injury or property damage: . . . which is expected or intended by any insured or which is the foreseeable result of an act or omission intended by any insured”

- **Umbrella Policy** states that it “does not apply” to “[a]n insured who commits or directs an act with the intent to cause a loss”

Criminal Injuries:

- **Homeowners** Policy excludes coverage due to “personal injury . . . injury arising out of any illegal act committed by or at the direction of any insured,”

- Umbrella Policy provides that it “does not apply to . . . [a]ny injury caused by a violation of a penal law or ordinance committed by or with the knowledge or consent of any insured, except those caused by violation of a motor vehicle law.”
Carrier Medical Records Request for Trial:
During the trial it was revealed that arguments of this type were common place. Mrs. Vescey had described to the hospital social worker that their relationship was one that involved regular verbal abuse. When being treated for the eye injury, however, she indicated that the verbal abuse had never escalated to physical abuse, as in this case.

Safeco requested that the psychologist records for Mrs. Vescsey be made available to the carrier in an attempt to prove that no coverage applied to the insured-husband, for the eye injury sustained by his wife.

The court determined that the records were protected by the psychologist-patient privilege

The Trial’s Outcome:

- There is no coverage for Roderick A. Vecsey under the Homeowners Policy for the claims asserted against him in the Vecsey Personal–Injury Action.

- There is no coverage for Roderick A. Vecsey under the Umbrella Policy for the claims asserted against him in the Vecsey Personal–Injury Action.

- Safeco has no duty to defend Roderick A. Vecsey in the Vecsey Personal–Injury Action.

- Safeco has no duty to indemnify Roderick A. Vecsey for any judgment against him in the Vecsey Personal–Injury Action.

**Self Defense or Just Plain Crazy?**

**Just the Facts:**

- Thomas Simon filed a Civil Action Complaint in the Court of Common Pleas of Philadelphia County, asserting four claims against Quick Stop and one against their employees (clerk) Fayeiz Alattaya.

- In the complaint, Simon alleges that he entered a Quick Stop store and attempted to make payment for certain items to Alattaya, who was working as a clerk in the store at the time.

- After an apparent misunderstanding between himself and Alattaya, Simon claims he attempted to cancel the purchase and leave the store, but was intercepted and struck in the head with a baseball bat by Alattaya.

**Insurance Case:** Plaintiff Essex underwrote a commercial general liability policy to Defendant Quick Stop which was effective at the time of Simon’s alleged beating.

- The Essex Policy provides coverage only for sums owed because of “bodily injury” or property damage caused by an “occurrence” in the “coverage territory” during the policy period.

- The Coverage Form contains a definitions section that defines “occurrence” as “an accident, including continuous or repeated exposure to substantially the same general harmful conditions.”

Self Defense or Just Plain Crazy?

Carriers Response:
- Insurer responded by acknowledging that the action involving liability, direct and vicarious, are covered by a general liability insurance policy
- However, there are exclusions in all contracts and the actions in this case would fall under those exclusions
- If the loss is excluded there would not be any defense provided as well

The Suit:
- Thomas Simon filed a Civil Action Complaint in the Court of Common Pleas of Philadelphia County, asserting four (4) claims against Quick Stop and one (1) against Alattaya.

- Four (4) of Simon’s complaint are claims against Quick Stop for
  1. “Negligent Hiring,” includes allegations that Quick Stop was negligent in hiring Alattaya because it either knew and ignored or failed to discover his alleged criminal background and violent propensities, and failed to have in place adequate procedures around hiring, and in particular, around the screening of job applicants.
  2. “Negligent Retention and Supervision,” contains allegations that Quick Stop was negligent by retaining yet failing to adequately supervise and monitor Alattaya by “failing to consider and take into account” the fact that Alattaya kept a baseball bat behind the store counter while he worked, thus potentially posing a danger to the public.
  3. “Negligent Security” contains allegations that Quick Stop failed to provide adequate protection for members of the public by not hiring security personnel or establishing appropriate security procedures, given the history of crime in the store and vicinity.
  4. “Vicarious Liability” for Alattaya’s alleged acts
Self Defense or Just Plain Crazy?

The Suit (continued)
One (1) claim is for “Assault and Battery” against Alattaya

The Insurance Coverage:
- The Essex Policy provides coverage only for sums owed because of “bodily injury” or property damage caused by an “occurrence” in the “coverage territory” during the policy period.
- The Coverage Form defines “occurrence” as “an accident,” including continuous or repeated exposure to substantially the same general harmful conditions.
- The Coverage Form also provides that in addition to the named policyholder, other individuals may qualify as an “insured,” including employees acting within the scope of their employment or performing related duties.
- The Coverage Form sets forth certain exclusions, among them an exclusion for bodily injury that is expected or intended by any insured. This exclusion is limited, however, in that it “does not apply to ‘bodily injury’ resulting from the use of reasonable force to protect persons or property.”
- The Combination General Endorsement contains limitations that further narrow the types of injury or claim to which the Essex Policy applies.
Self Defense or Just Plain Crazy?

The Insurance Coverage (continued):

- The Combination General Endorsement (continued):

A particular provision states, in pertinent part:

This insurance does not apply to ‘bodily injury,’ . . . ‘personal injury’ . . . or any injury, loss, or damages including consequential injury, loss or damage, arising out of, caused by or contributed to:

d. as a result of and/or arising out of assault and/or battery, or out of any act or omission in connection with the prevention or suppression of such acts, whether caused by or at the instigation or direction of any insured, insured’s employees, patrons or any other person(s); or

e. as a result of alleged negligence or wrongdoing in the hiring, training, placement, supervision or monitoring of others by insured

The Combination General Endorsement further provides that, “[w]here there is no coverage under this policy, there is no duty to defend.”
Essex Ins. Co. v. Quick Stop Mart, Inc., (PA.)

Self Defense or Just Plain Crazy?

The Proceedings and Outcome:

This case was drawn out over several court hearings that amounted to over two years of legal procedures. Therefore, the carrier was not immediately granted a declaratory judgment allowing them to bow out of the law suit. After several court appearances the carrier finally received the following court decision:

“The Court finds that Essex has no duty to defend either Alattaya or Quick Stop in the underlying state court action. Because Essex has no duty to defend, it has no duty to indemnify the Defendants in that action. Accordingly, the Court will grant Essex’s Motion for Summary Judgment.”
Farmers Auto Insurance Assoc. vs. Danner
(Illinois)

THESE ARE OUR INSUREDS?

Just the Facts:

Both defendants involved in this incident were separately insured with Farmers! The following were the allegations made against the defendants:

- David Winkler entered the property of Michael Danner to retrieve his son’s baseball accidentally hit into Danner’s property.

- Mr. Danner then got into his pickup truck and drove it at a high rate of speed, striking Mr. Winkler.

- Mr. Danner then got out of his truck and struck Mr. Winkler three times with a golf club, breaking three ribs.

- Mr. Winkler tried to subdue Mr. Danner by wrestling him to the ground.

- While the men were wrestling, Tracy Watson came upon the scene and kicked Mr. Winkler in the back and ribs, causing one of his ribs to puncture his lung. Watson also stuck Winkler about his body with her hands.

Insurance Case: Mr. Winkler was seeking more than $50,000 in compensatory damages from both Mr. Danner and Ms. Watson. In a declaratory-judgment complaint, Farmers sought a judgment that they has not duty to defend due to policy exclusions.
Farmers Auto Insurance Assoc. vs. Danner
(Illinois)

THESE ARE OUR INSUREDS?

Carriers Reasoning:

The policies for both Danner and Watson were identical in all material aspects.

- Their homeowners liability coverage included the following language:

"Coverage E--Personal Liability"
If a claim is made or a suit is brought against an insured for damages because of bodily injury or property damage caused by an occurrence to which this coverage applies, we will:
1. pay up to our limit of liability for the damages for which the insured is legally liable; and
2. provide a defense at our expense by counsel of our choice, even if the suit is groundless, false[,] or fraudulent. We may investigate and settle any claim or suit that we decide is appropriate. Our duty to settle or defend ends when the amount we pay for damages resulting from the occurrence equals our limit of liability"

- Their homeowners definition section included definitions of the words “occurrence” and “bodily injury”:

"occurrence' means an accident, including continuous or repeated exposure to substantially the same general harmful conditions, which results, during the policy period, in: a. bodily injury."

"bodily injury' means bodily harm, sickness[,] or disease, including required care, loss of services[,] and death that results."
Farmers Auto Insurance Assoc. vs. Danner (Illinois)

THESE ARE OUR INSUREDs?

Carriers Reasoning:

The two policies both contained the following exclusion:

"1. Coverage E - Personal Liability and Coverage F - Medical Payments to Others do not apply to bodily injury or property damage:
   a. which is expected or intended by the insured[.]

Trial Courts Response:

- The court determined that neither Farmers or the dependents had presented definitive evidence that the actions were or were not done "with intent"
- The court stated:
  "... I'm troubled, troubled by the provision that I've earlier cited to you under the Coverage E personal liability

[(provide a defense *** even if the suit is groundless, false[,] or fraudulent')].

I think there is a duty to provide [a] defense and let, you know, it may[ ]be--the outcome may[ ]be intentional but I'm not sure of that and I don't think anybody can be. And on that basis, I'm going to deny the motion for judgment on the pleadings.”
THESE ARE OUR INSUREDs?

The Carrier Appealed:

- Farmers appealed the lower Trail court’s decision on the issue of the duty to defend.
- The Appeals Court determined that since the appeal was based on legal determination and not factual determination, their review of the lower court’s decision would be de novo (Latin meaning starting new or fresh).
- The issue would be whether the Trail court correctly determined that Farmers had a duty to defend Danner and Watson.

- The duty to defend is much broader than the duty to indemnify:

  "[T]o determine whether the insurer has a duty to defend the insured, the court must initially look to the allegations in the underlying complaint and compare those allegations to the relevant provisions of the insurance policy."

  “However, the trail court may look beyond the allegations of the complaint in the underlying lawsuit in order to determine an insurance company’s duty to defend its insured”

  "As the threshold for pleading a duty to defend is low, any doubt with regard to such duty is to be resolved in favor of the insured."
Farmers Auto Insurance Assoc. vs. Danner (Illinois)

THESE ARE OUR INSUREDS?

The Appeals Court’s Findings:

- The trial court found that the duty-to-defend language in the insurance policies required Farmers to defend Danner and Watson in the underlying lawsuit.
- The court interpreted the language "provide a defense at our expense by counsel of our choice, even if the suit is groundless, false[,] or fraudulent" to mean that Farmers had a duty to defend any claims, regardless of whether it was a suit brought against an insured for bodily injury caused by an occurrence to which the coverage applied.
- Here, construing the policy as a whole, the duty-to-defend provision clearly provides that Farmers will defend an otherwise covered claim or suit even if the allegations are groundless, false, or fraudulent.

"If the underlying complaints allege facts within or potentially within policy coverage, the insurer is obliged to defend its insured even if the allegations are groundless, false, or fraudulent"

“The language in the policies does not impose a duty to defend a claim or suit against an insured for damages because of bodily injury that were not caused by an "occurrence to which this coverage applies."

“Therefore, the trial court erred by reading the duty-to-defend language to impose a duty to defend any groundless, false, or fraudulent suit regardless of whether the bodily injury was caused by an "occurrence to which this coverage applies."

- For the reasons stated, we reverse the trial court's judgment and remand for further proceedings.
Farmers Auto Insurance Assoc. vs. Danner (Illinois)

THESE ARE OUR INSUREDs?

It Is Not Over Until The Fat Lady Sings:

Case remanded to trial court to consider applicability of the policy’s expected or intended exclusion to an amended complaint.

- The Appeals court only determined the issue of defense
- The dependents then returned to the Trail Court to ask that court to determine if Farmers must revisit the issue of defense if the court finds that the actions of the defendants can be seen as “reasonable force”
“PERMISSIVE USER” OR “PROMISCUOUS USER”?

**Just the Facts:**

- Todd A. Crawford suffered injuries in a motor vehicle accident after colliding, head-on, with a truck driven by Rhonda Long.
- Rhonda Long drove a truck owned by a grading and paving company, Duran & Venables (D&V).
- St. Paul issued a commercial automobile policy to D&V, which covered the truck driven by Long.
- Crawford obtained a default judgment against Long and sought reimbursement from St. Paul, arguing Long was a permissive user of the truck.
- Matthew Guyer was a salesman for D&V assigned the Ford F-150 truck for his use on the job, which covered sales territory from Modesto to Sacramento.
- D&V knew Guyer used the truck as his primary vehicle and allowed him to use it for personal as well as professional purposes.
- On several occasions, Guyer visited Long, a prostitute, for sexual services. During three of these visits, Guyer allowed Long to drive the truck.
- The first time Guyer let Long drive the vehicle, he told her, I’m going to let you do this, but I aint really supposed to but just dont get in no wrecks. On the second occasion, Guyer told Long he wasn’t supposed to let me drive it because he was drinking then.
- The day of the accident, Guyer gave Long permission to borrow the truck to check on her daughter and purchase drugs for him. Again, Guyer told Long he was not supposed to allow her to drive and he told her not to get into a wreck. Guyer warned Long that if she got into a wreck or got caught driving the truck, he would say she had stolen it.
“PERMISSIVE USER” OR “PROMISCUOUS USER”?

Insurance Case:

St. Paul Policy

Under the heading **Who Is Protected Under This Agreement** and the subheading **Corporation or other organization**, the policy states:

- **If you are named in the Introduction as a corporation or other organization**, you are a protected person for the use of a covered auto.

- Also, your executive officers and directors are protected persons. But only for the use of a covered auto.

- Also, your stockholders are protected persons, but only for their liability as your stockholders.

- The **policy also covers, as stated under the subheading Any permitted user**, Any person or organization to whom you’ve given permission to use a covered auto you own, rent, lease, hire or borrow is a protected person.

D&V Fleet and Company Vehicles Policy:

The **Personal Use section states**:

- **Company vehicles are to be used for company business. Vehicles are not to be loaned or rented to anyone not employed by the company.**

- **Each new D&V employee was specifically advised that under company policy, vehicles are not to be loaned or rented to anyone not employed by the company.**

- **Guyer was informed of the policy against loaning vehicles to nonemployees, and signed and dated the policy.**

- **Guyer was terminated after the accident for violating the policy.**
“PERMISSIVE USER” OR “PROMISCUOUS USER”?

**Trial Court Decision:**

- The court noted the case involved a third-party victim and the **insurer**, requiring **liberal interpretation** of the insurance policy in favor of coverage.

- **However**, the court also stated: [W]hether the requisite permission was present at the time and place of the accident is a question of **fact**. [Citation.] As the trier of fact the Court weighs the evidence based on the preponderance of the evidence standard.

- The standard of liberal interpretation does not apply to the Courts consideration of the credibility of the witnesses or the weight of the evidence.

- Accordingly, the court considered the evidence both supportive of a finding of permission and negating a finding of permission on the part of D&V.

**The Issue of “Permissive User”**

- Crawford argues the St. Paul policy is ambiguous and therefore must be construed against the insurer and in favor of coverage.

- The ambiguity, Crawford contends, consists of the word permission.

- According to Crawford, the policy does not state whether permission is express, implied, or both, creating an ambiguity.
“PERMISSIVE USER” OR “PROMISCUOUS USER”?

**Trial Court Decision – “Permissive User”:**

- We interpret insurance policies under the basic principles of interpretation applicable to all contracts.
- Policy language must be construed in the context of the policy as a whole and the circumstances of the case, and cannot be found ambiguous in the abstract.
- The parties and the court considered both express and implied permission, reflecting a reasonable understanding that the policy contemplated both in the term permission.

**Expressed and Implied Permission**

**Express Permission:**

- As for express permission, the court found the evidence revealed no express permission by D&V to Long to drive the truck.
- D&Vs policy prohibited employees from loaning company vehicles to nonemployees.

**Implied Permission:**

- As regards implied permission, the court considered
  - Guyers understanding of his authority to lend the truck,
  - Longs understanding of whether she had permission
  - The application of D&Vs policy, and
  - D&Vs oversight of the employees use of company vehicles.
  The court found no implied permission.

**Conclusion:**

- Since the trial court and the parties construed permission as both express and implied, we find no ambiguity in the policy regarding permission.
“PERMISSIVE USER” OR “PROMISCUOUS USER”?

- The court concluded:

“Plaintiff relies almost entirely on a theory of failure to monitor to support a finding that D&V should have known Guyer would lend his vehicle to Long. The weight of the evidence simply does not demonstrate a failure to monitor that would lead conclusively to a finding of implied permissive use.

In any event, failure to monitor is only one factor in the equation.

Based on the record as a whole, in light of all of the factors properly considered, the preponderance of the evidence shows that D&V had a reasonable expectation that Guver would follow its express written policy against third party use.

There is no evidence of conduct that would lead to the conclusion that third party use should have been in the contemplation of the owners. There is no coverage for this accident under the policy.”

- The court entered judgment for St. Paul. Crawford
Allstate Ins. Co. vs. Campbell
(Ohio)

SCIENCE PROJECT OR A STUDY IN STUPIDITY?

Just the Facts:

- A group of teenage boys, including Dailyn Campbell, Jesse Howard, and Corey Manns, stole a lightweight Styrofoam target deer typically used for shooting or archery.

- The boys fastened a piece of wood to the target so that it could stand upright.

- Along with Carson Barnes, they then placed it just below the crest of a hill in Hardin County on County Road 144, a hilly and curvy two-lane road with a speed limit of 55 miles per hour.

- They put the target on the road after dark – between 9:00 and 9:30 p.m. in a place in which drivers would be unable to see it until they were 15 to 30 yards away.

- The boys then remained in the area so that they could watch the reactions of motorists.

- About five minutes after the boys placed the target in the road, Robert Roby drove over the hill.

- Roby took evasive action, but ultimately lost control of his vehicle, which left the road, overturned, and came to rest in a nearby field.

- This accident caused serious injuries to both Roby and his passenger, Dustin Zachariah.
Allstate Ins. Co. vs. Campbell  
(Ohio)

SCIENCE PROJECT OR A STUDY IN STUPIDITY?

The Insurance Case: Each of the boys involved were insured by various carriers. We will concentrate on the Allstate policy that responded to the claim against Dailyn Campbell.

- Roby and Zachariah filed suits in the Franklin County Court of Common Pleas against the boys, their parents, and their insurance companies, among others, seeking recovery for the damages sustained in the accident.

- Allstate Insurance Company (“Allstate”), American Southern Insurance Company (“American Southern”), Erie Insurance Exchange (“Erie”), and Grange Mutual Casualty Company (“Grange”) filed declaratory judgment actions in the Franklin County Court of Common Pleas seeking a declaration that they are under no duty to defend or indemnify their insureds, the juveniles and their parents, in the Roby and Zachariah lawsuits.

The Question of “Intentional Act”

- Homeowners’ insurance policies typically provide coverage for harm accidentally caused by their insureds; intentional torts are excluded.
- Most policies contain an intentional-act exclusion, which states that the insurance company will not be liable for harm intentionally caused by the insured.
- But when there is no evidence of direct intent to cause harm and the insured denies the intent to cause any harm, the insured’s intent to cause harm will be inferred as a matter of law in certain instances
Allstate Ins. Co. vs. Campbell  
(Ohio)

SCIENCE PROJECT OR A STUDY IN STUPIDITY?

The HO Policy Language

- Although the central question is whether intent to harm should be inferred as a matter of law under the circumstances of this case, insurance coverage is finally determined by the policy language.

- As a preliminary matter, we recognize that each policy issued by the four insurers contains similar language defining an “occurrence” as an accident and providing coverage for bodily injury arising from an occurrence. Each insurer, however, uses unique exclusionary language.

Allstate HO Policy Language

- Allstate issued policies to a parent of Dailyn Campbell and the parents of Jesse Howard
- The exclusion portion of the Allstate policies provides: 
  
  **Losses We Do Not Cover**:  
  We do not cover any bodily injury or property damage intended by, or which may reasonably be expected to result from the intentional or criminal acts or omissions of, any insured person.

  **This exclusion applies even if:**
  (a) such insured person lacks the mental capacity to govern his or her conduct;
  (b) such bodily injury or property damage is of a different kind or degree than intended or reasonably expected; or
  (c) such bodily injury or property damage is sustained by a different person than intended or reasonably expected
SCIENCE PROJECT OR A STUDY IN STUPIDITY?

A lengthy court battle ensued due to the varying language used between the different HO policies and the court’s interpretation of their unique definition of “intentional acts”. Below is the outcome for the Allstate policy:

“In contrast to the other policies in this case, which exclude from coverage harm that is expected or intended by the insured, the Allstate policy includes language that excludes coverage for bodily injury or property damage “which may reasonably be expected to result from the intentional or criminal acts or omissions of” an insured.

The Allstate policy’s addition of the qualifier that the harm must have been “reasonably” expected to result from the intentional act, . . .

While the car crash that occurred in this case was not “certain” to occur—at least in the manner that it did—it is hard to dispute that such an event could “reasonably” be expected to result from the “intentional * * * acts” of the teenagers in this case, a more objective than subjective standard.

In my view, there is no genuine issue of material fact with regard to that issue under Allstate’s policy, because under the objective “reasonably * * * expected to result” standard in that policy, the boys’ professed subjective intent not to harm anyone is immaterial.

Accordingly, I also would reverse the judgment of the court of appeals with regard to Allstate and reinstate the trial court’s summary judgment in favor of Allstate.

I would hold that Allstate is under no duty to defend or indemnify Dailyn Campbell’s parent and the parents of Jesse Howard.
**Employers Mutual Ins. vs. Al-Mashhadi**  
(MI)

PROTECTION OR A DANGER?

**Just the Facts:**

- Al-Baydany was injured after being shot in the eye.

- The shooting occurred at a Sunoco gas station located in Detroit, Michigan owned and operated by Schaefer & Puritan ("S&P").

- This gas station is open 24 hours, and is situated in an unsafe area.

- There had been prior robberies and shootings at the gas station, and customers have been known to threaten the employees.

- The gas station is set up as a convenience store, where the cashier is stationed in a “caged area,” where he or she is separated from the general public by a locked door and bulletproof Plexiglas.

- On the night of the shooting, S&P employee Hamed Al-Mashhadi was working a shift that began at 3:00 p.m. and concluded at 11:00 p.m.

- Around 11:00p.m. another S&P employee Ahmad Al-Awad signed himself in for the 11:00 p.m. to 7:00a.m. shift.

- Al-Awad brought two friends with him to the gas station: Hussein Nabhan, and Al-Baydany who suffered the injury.

- Apparently, all four of these individuals were friends and classmates at Dearborn’s Fordson High School.
PROTECTION OR A DANGER?

- Al-Baydany testified that he was seeking employment for a position that would soon be opening at the gas station upon Al-Awad’s departure overseas.

- Al-Mashhadi accidentally discharged a .22 rifle while dancing around and posing for his friends’ camera-phones.

- The rifle was purchased by employee Al-Awad with the authorization of the owner/manager Adel Kobeissi in order to protect the gas station.

- The gun was purchased two to three weeks before the incident and that Kobeissi and other gas station employees were aware of the gun’s presence.

**Insurance Case:** S&P maintains a Businessers Policy (BOP) with EMC (“Policy”), EMC agreed to defend Al-Mashhadi subject to a reservation of rights.

- Al-Mashhadi has evoked his Fifth Amendment privileges regarding the actual incident.
- In particular, Al-Mashhadi has declined to testify regarding what happened immediately before and during the discharge of the rifle.
**Employers Mutual Ins. vs. Al-Mashhadi**  
(MI.)

**BOP Insurance Coverage – Policy Language and Carriers Response:**

**Who is an Insured provision:**

The coverage under the policy extended to employees of S&P. According to the Policy, each of the following is an insured:

[S&P’s] “volunteer workers” only while performing duties related to conduct of your business, or your “employees”, other than either your “executive officers”...or your managers ... **but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.**

EMC argues that *Al-Mashhadi cannot be considered “insured” for purposes of the Policy*, because he was not acting:

(a) within the scope of his employment; or  
(b) performing duties related to the conduct of S&P.

**Covered Losses:**

EMC states that the “**bodily injury**” as a result of the shooting was not a “**covered occurrence**,” as determined by the following Policy language:

[EMC] will pay those sums that the insured becomes legally obligated to pay as damages because of the “bodily injury” ... **to which this insurance applies**. We will have the right and duty to defend the insured against any “suit” seeking those damages. However, we will have no duty to defend the insured against any “suit” seeking damages for “bodily injury” ... to which this insurance does not apply.

Relying on a provision that specifically *excludes from coverage any bodily injury that is “expected or intended from the standpoint of the insured,”* EMC submits that coverage will not apply.
Employers Mutual Ins. vs. Al-Mashhadi
(MI.)

The Trial:

Who is an Insured:

- Employees are considered “insured,” but only for acts “within the scope of their employment,” or for acts occurring “while performing duties related to the conduct of [S&P].

- The provision essentially establishes that in order for Al-Mashhadi, and all other employees of S&P, to qualify for coverage under the Policy their actions must either
  1. be in the course of their employment, or
  2. be in the performance of duties related to the operation of the gas station

- SHOOTING THE GUN: Al-Mashhadi’s discharge of the .22 rifle must have fallen within one of these two categories. The Court finds that it did not.

- ARISING OUT OF HIS DUTIES: Was Al-Mashhadi’s conduct was within the scope of his employment. As the dispositive terms are undefined in the Policy, the Court must construe them in accordance with their commonly used meaning. “While the issue of whether the employee was acting within the scope of his employment is generally for the trier of fact, the issue may be decided as a matter of law where it is clear that the employee was acting to accomplish some purpose of his own.”

CONCLUSION:
Application of the factors and a review of the undisputed facts of this case plainly demonstrate that Al-Mashhadi’s actions, that led to the shooting of Al-Baydany, were not taken within the scope of his employment, nor where they related to the performance of his duties as a cashier for the gas station.
**Tuturea vs. Tennessee Farmers Mutual Ins. (TN)**

**INTENTIONAL LOSS OR ACCIDENT DUE TO INSANITY?**

**Just the Facts:**

*This case concerns coverage under three insurance policies: two homeowner's policies and one automobile policy. George Tuturea (Mr. Tuturea) and Plaintiff Gladys Tuturea (Mrs. Tuturea) were a married couple who lived in separate houses located about one mile apart.*

- **The [residence on Branch Road] primarily occupied by Mrs. Tuturea was titled in her name.**

- **The [residence on White Oak Drive] primarily occupied by Mr. Tuturea was titled in his name.**

- **Mrs. Tuturea's house was insured by Defendant Tennessee Farmers Mutual Insurance Company ("TFMI") and she was the only named insured listed.**

- **Mr. Tuturea's home was insured by TFMI and he was the only name[d] insured listed.**

- **TFMI issued an automobile insurance policy to Mrs. Tuturea d/b/a Kentucky Lake Realty. The automobile policy covered a Lincoln Town Car and a Dodge Ram, and Gladys Tuturea and George Tuturea were listed on the policy as "covered drivers."**

- **Mr. Tuturea, who was suffering from terminal cancer, set fire to his house in an unsuccessful attempt to commit suicide.**

- **The home, personal property, and the two automobiles covered by the policies issued by TFMI were destroyed.**

- **At the time, Mrs. Tuturea had [moved] into Mr. Tuturea's home to care for him in his illness. Mr. Tuturea subsequently died in 3 months later.**
**Tuturea vs. Tennessee Farmers Mutual Ins.**
**(TN)**

**INTENTIONAL LOSS OR ACCIDENT DUE TO INSANITY?**

- **TFMI denied insurance coverage for all losses** due to (1) intentional damage, and (2) Mr. and Mrs. Tuturea were members of the same household at the time of the loss

- **Mrs. Tuturea filed suit against her carrier alleging that TFMI was liable under the policies** for the losses of real and personal property caused by the fire.

- **She also alleged that the fire set by Mr. Tuturea was accidental because he "suffered an insane attack prior to the fire" and his mental state remained that way for a period of time after the fire and because he "was not in control of his actions due to his mental state."**

- **She asserted damages in excess of $300,000 and sought costs and reasonable attorney's fees.**

- **TFMI answered and denied liability** under the policies and counterclaimed for policyholder bad faith

- **TFMI also sought subrogation against the Estate of George Tuturea.**
INTENTIONAL LOSS OR ACCIDENT DUE TO INSANITY?

Tennessee Farmers Mutual Ins – Policy Provisions:

HOMEOWNERS – Both policies are identical:

**Insured** means:
1. you; or 2. a person who is a resident of your household and who is either: a. related to you by blood, marriage, or adoption; b. your ward; or c. your foster child.

**Residence** means the one or two family dwelling owned by you, described in the Declarations, and occupied by you as your personal dwelling. It includes structures attached to the dwelling.

... You or your means the person or entity identified as "INSURED NAME" in the Declarations and that person's spouse if a resident of the same household.

The coverage afforded by this policy applies only to losses under **SECTION I** and occurrences under **SECTION II** that take place during the policy period.

**ACTS WHICH AUTOMATICALLY VOID THE POLICY**

Concealment or Fraud
The policy shall be automatically void as to all insureds if any insured, whether before or after a loss or occurrence: 1. conceals or misrepresents any material fact or circumstance relating to this policy; 2. makes false statements relating to this policy; or 3. commits fraud relating to this policy.
**Tuturea vs. Tennessee Farmers Mutual Ins. (TN)**

**INTENTIONAL LOSS OR ACCIDENT DUE TO INSANITY?**

**Tennessee Farmers Mutual Ins – Policy Provisions:**

**Direct Damage Coverages - HO:**

We cover accidental direct physical loss to property insured under **Coverage A — Dwelling** . . .

. . .

We cover accidental direct physical loss to property insured under **Coverage C — Personal Property** caused by the following perils unless excluded in this policy: **1. FIRE or LIGHTNING**

. . .

**Exclusions:**

Under **SECTION I we do not cover any loss resulting directly or indirectly from any of the excluded events listed below.** We do not cover such loss for anyone regardless of: (a) the cause of the excluded event; or (b) other causes of the loss; or (c) whether other causes acted concurrently or in any sequence with the excluded event to produce the loss.

5. Failure of **any insured** to **use all reasonable means to save and protect covered property at and after the time of loss or when the property is threatened or endangered.**

8. **Any action, other than accidental,** committed by or at the direction of **any insured:** a. resulting in a loss; or b. with the intent to cause a loss.
INTENTIONAL LOSS OR ACCIDENT DUE TO INSANITY?

Tennessee Farmers Mutual Ins – Policy Provisions:

AUTOMOBILE:

Tennessee Farmers Mutual Insurance Company, Columbia Tennessee, agrees to insure you according to the terms and conditions of this policy based on your payment of the premium(s) for the coverage(s) you have chosen and in reliance on your statements in the application(s) for insurance and in the Declarations to this policy.

Named insured means the person or entity shown as the insured in the Declarations. It also includes the person's spouse if a resident of the same household.

You or Your means the name insured(s) shown in the Declarations and his or her spouse if a resident of the same household.

Your covered auto means:

1. any auto described in the Declarations that is owned by you.

Physical Damage Insuring Agreement
The coverage afforded by this policy applies only to accidents and losses that take place during the policy period.

Comprehensive Coverage:
We will pay for direct and accidental loss to your covered auto . . .

Exclusions:

9. loss caused by the intentional act or omission of, or at the direction of, a covered person . . .
Tuturea vs. Tennessee Farmers Mutual Ins. (TN)

INTENTIONAL LOSS OR ACCIDENT DUE TO INSANITY?

THE COVERAGE ISSUES BEFORE THE COURT - Residency:

Question #1 - Was Mrs. Tuturea a resident of Mr. Tuturea's household
Question #2 - Was the burning of the house by Mr. Tuturea intentional

- If the burning was not intentional
  o Mrs. Tuturea is entitled to the following coverage if Mr. Tuturea did not intentionally burn the residence, regardless of whether the spouses were co-insureds under their respective policies:
    1. full coverage for losses under Mr. Tuturea's homeowner's policy,
    2. full coverage for losses under the automobile policy, and
    3. coverage for a percentage of her personal property under her individual homeowner's policy.

- If the burning was intentional & the spouses were not co-insureds:
  o Mrs. Tuturea may only recover for a percentage of her personal property under her individual HO policy

- If the burning was intentional & the spouses are co-insureds under their respective HO policies and her Auto policy:
  o Mr. Tuturea would only be covered IF she can be deemed as an innocent co-insured.
Tuturea vs. Tennessee Farmers Mutual Ins. 
(TN)

LEGAL ISSUES THE COURT CONSIDERED:
Precedent has been set in previous court cases. The following non-exhaustive list of factors had been deemed to be relevant to whether a person is a resident of another's household in a given case:

1. The person's subjective or declared intent to remain in the household either permanently or for an indefinite or unlimited period of time
2. The formality or informality of the relationship between the person and the other members of the household
3. Whether the place where the person lives is in the same house or on the same premises
4. Whether the person asserting residence in the household has another place of lodging, and
5. The age and self-sufficiency of the person alleged to be a resident of the household.

COURT TESTIMONY:
- The couple married in 1970 and, despite the filing of more than one divorce petition, remained married through Mr. Tuturea's death
- They had a history of marital problems which led them to live in separate residences for a period, their relationship remained fairly strong
- They shared their finances, residences, and vehicles; entertained guests together; and went about life's daily activities together
- In the good times, the couple spent most of their time together
- Mrs. Tuturea explained, while some married couples might maintain separate bedrooms in the marital home, the Tutureas maintained separate residences. This was the pattern of the couple's relationship for a number of years.
COURT TESTIMONY:

Cancer – a change from the usual:
- The situation changed when doctors diagnosed Mr. Tuturea with terminal cancer

THEN Mrs. Tuturea moved from the couple's Branch Road residence to live full time with Mr. Tuturea at the White Oak residence

- Mrs. Tuturea conceded that she "half" moved into the White Oak residence and moved most of her belongings there, including her bedroom suite, the vast majority of her clothing, her cooking utensils, and her pets

- Despite the fact that she continued to maintain the Branch Road residence, Mrs. Tuturea testified that it was "closed up" most of the time.

- In her words, the Branch Road residence served as a "warehouse" that she would check on "once in a while."

- Mrs. Tuturea made a particularly strong statement regarding her decision to move her dogs to the White Oak residence. She stated, "if I moved the dogs over there, that meant that I was going to be there full time, because if the dogs were there, I was there."

- It is undisputed that Mrs. Tuturea moved the dogs to the White Oak residence prior to the fire. Thus, Mrs. Tuturea's testimony supports a conclusion that she lived full time with Mr. Tuturea prior to the fire, as does the testimony of Mrs. Tuturea's stepdaughter, Marianne Roman, and Mrs. Tuturea's long-time friend, Betty Hunt, who both confirmed that Mrs. Tuturea had primarily stayed at the White Oak residence since her husband's cancer diagnosis.
TRIAL OUTCOME:

Residence Issue:

Mrs. Tuturea was a resident of Mr. Tuturea's household based on the following:

1) Mrs. Tuturea's subjective or declared intent was to remain in the household for an indefinite period of time
2) she was in a formal, married relationship with Mr. Tuturea
3) she lived in the same residence as Mr. Tuturea at the time of the fire
4) she made a voluntary choice to reside at that residence in order to care for her husband

Now that the court decided on the issue of residency the next issue is one of “intent”. Coverage may still apply if Mrs. Tuturea can prove that the fire was an accident!
**Tutorea vs. Tennessee Farmers Mutual Ins. (TN)**

**INTENTIONAL LOSS OR ACCIDENT DUE TO INSANITY?**

**THE COVERAGE ISSUES BEFORE THE COURT – Accidental or Intentional act of burning:**

*Question* - *Was Mr. Tutorea suicide attempt by burning the residence accidental due to his mental state and inability to discern what he was doing*

- If the burning was not intentional:
  - Mrs. Tutorea is entitled to the following coverage if Mr. Tutorea did not intentionally burn the residence, **regardless of whether the spouses were co-insureds** under their respective polices:
    1. full coverage for losses under Mr. Tutorea's homeowner's policy,
    2. full coverage for losses under the automobile policy, and
    3. coverage for a percentage of her personal property under her individual homeowner's policy.

**COURT TESTIMONY:**

- Mrs. Tutorea *argues that the intentional acts exclusions do not apply* in this case because the **burning of the residence was an accident**.

- She argues that **the word "accident" as used in an insurance policy refers to an unforeseen, unexpected event** occurring without intention or design.
Her agreement based on common definitions of the meaning of the word “accident”

- **Intention** is a "willingness to bring about something planned or foreseen," *Black's Law Dictionary* 826 (8th ed. 2004)
- "Design" is a "[a] plan or scheme" or "[p]urpose or intention combined with a plan,"
- It follows that an act is "intended" or "intentional" for the purposes of insurance coverage if it is the actor's conscious objective or desire to bring about a planned or foreseen result

Mrs. Tuturea, in effect, submits that the controlling question for purposes of determining whether Mr. Tuturea intentionally set fire is whether he formed a conscious desire or objective to bring about the fire as a foreseen result of his actions

Mrs. Tuturea argues that Mr. Tuturea did not form a conscious desire or objective to bring about the fire in this case because he was insane, had an acute break with reality, and was not in control of his actions when he set the fire.

Mrs. Tuturea offers the deposition testimony of Dr. J. Gerard Monette, who treated her husband in the days and months following the fire, as expert testimony in support of her position.

The fatal deficiency in Mrs. Tuturea's position, however, is that the trial court entered findings of fact that compel a contrary conclusion, and the evidence does not support overturning its findings.
**Tuturea vs. Tennessee Farmers Mutual Ins. (TN)**

**TRIAL OUTCOME:**

*Intentional or Accidental Issue:*

- The court's found that "the insanity was not an overwhelming influence" as presented by Mr. Tuturea’s physician

- The court looked to the testimony of the lay witness which established:
  1. Mr. Tuturea contemplated burning the residence prior to the night of the fire
  2. he decided to burn the residence in an attempt to commit suicide
  3. he specifically threatened to burn the house down on the night of the fire
  4. he was conscious, alert, and aware at the time he set the fire and immediately thereafter

- The court’s opinion, therefore, was *Mr. Tuturea's conscious objective and desire* to bring about a planned or foreseen result, which in this case was the burning of the White Oak residence, **was intentional and not accidental**

Now that that court decided on this issue Mrs. Tuturea pursued the “innocent insured” concept to attempt to receive coverage.
Tuturea vs. Tennessee Farmers Mutual Ins. (TN)

INTENTIONAL LOSS OR ACCIDENT DUE TO INSANITY?

THE COVERAGE ISSUES BEFORE THE COURT – innocent insured:

**Question** - Does the innocent co-insured doctrine permit Mrs. Tuturea to recover – therefore – does state court precedent supersede policy provisions

**COURT TESTIMONY:**

- Mrs. Tuturea argues that she is entitled to recover for the loss of property destroyed in the fire under the "innocent co-insured" or "innocent spouse" doctrine.

- Tennessee Courts adopted the innocent co-insured doctrine in *Ryan v. MFA Mutual Insurance Co* (Tenn. Ct. App. 1980), as a "better reasoned" and "more equitable" alternative to the traditional rule of recovery in such cases.

- **Under the traditional rule**, an insured's intentional destruction of property, *e.g.*, the intentional burning of an insured's residence, operated as a complete bar to recovery by an innocent co-insured —often the spouse of the guilty party

- The **innocent co-insured doctrine** as it has developed in Tennessee permits recovery for losses caused by the intentional acts of another insured if the applicable policy, as the result of an ambiguity, does not apprise the reasonable person purchasing insurance that an innocent co-insured will be held jointly responsible.
Tuturea vs. Tennessee Farmers Mutual Ins. (TN)

INTENTIONAL LOSS OR ACCIDENT DUE TO INSANITY?

THE COVERAGE ISSUES BEFORE THE COURT – innocent insured:

COURT TESTIMONY:

HO Exclusions:

Under SECTION I we do not cover any loss resulting directly or indirectly from any of the excluded events listed below. We do not cover such loss for anyone regardless of: (a) the cause of the excluded event; or (b) other causes of the loss; or (c) whether other causes acted concurrently or in any sequence with the excluded event to produce the loss.

5. Failure of any insured to use all reasonable means to save and protect covered property at and after the time of loss or when the property is threatened or endangered.

8. Any action, other than accidental, committed by or at the direction of any insured: a. resulting in a loss; or b. with the intent to cause a loss.

Auto Physical Damage Exclusion:

9. loss caused by the intentional act or omission of, or at the direction of, a covered person . . .
**Tuturea vs. Tennessee Farmers Mutual Ins. (TN)**

INTENTIONAL LOSS OR ACCIDENT DUE TO INSANITY?

THE COVERAGE ISSUES BEFORE THE COURT – *innocent insured*:

**TRIAL OUTCOME:**

- The trial court's conclusion that the *innocent co-insured doctrine* does not apply under the facts because the policies are unambiguous.
- **Homeowners:**
  - The relevant provisions of the homeowner's *policies limit coverage to accidents that are neither expected nor intended by "an insured,"
  - *Exclude any act other than accidental committed by* or at the direction of *any insured."
  - Thus *excluding coverage "for anyone" regardless of the cause of the excluded event, and*
  - *Voids coverage as to "all insureds" if "any insured" commits fraud, conceals material facts, et cetera.*

- **Auto:**
  - The automobile policy *similarly limits coverage to accidental loss and*
  - *Excludes "any" loss caused by the intentional act or omission of, or at the direction of, a covered person.*

**Conclusion:**
The policies clearly and unambiguously create joint responsibility between the insureds and exclude recovery by an innocent co-insured for intentional acts committed by another insured.