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Homeowner's insurance coverage, by its name, is intended to provide coverage for an insured's home and related risk. However, homeowner's insurance not only covers the dwelling and other structures owned by an insured, but also insures against bodily injury and property damage occurrences for which an insured becomes liable. Homeowner's insurance does not, however, cover losses for bodily injury to an insured. The theory behind excluding the insured is that homeowners should not cover against every peril faced by an insured. More importantly, insureds have other avenues to protect against other losses, such as professional malpractice, personal health insurance and automobile insurance.

An emerging issue in liability insurance law is the determination of what constitutes an "occurrence" for purposes of homeowner's policy coverage. In an attempt to limit coverage afforded...
to insureds and at the same time avoid litigation, many insurance companies have written their policies with restrictive language. This restrictive language attempts to narrow ambiguous terms. For example, Milbank Insurance Company defines "occurrence" in its homeowner's policy as "an accident, including exposure to conditions, which results, during the policy period in bodily injury or property damage." Auto Owners Insurance Company, on the other hand, goes further in its definition, stating that an occurrence includes "all continuous or repeated exposure to substantially the same generally harmful conditions." Therefore, the Auto Owners policy would afford more protection to an insured if she were exposed repeatedly by the same occurrence than would the Milbank policy. A general homeowner's insurance policy simply covers losses, bodily injury, property damage and personal injury "which occur during the policy term." While some policies leave the definition of loss open to interpretation, many others draft the policy in an attempt to leave no ambiguity.

Defining language is one tool to simplify the scope of coverage for insurance policies. While actual coverage in a homeowner's insurance policy appears at first glance expansive, litigation has prompted insurance companies to add exclusions to the policies, reining in the outer limits of coverage. Insurers have learned the hard way that ambiguous language can and will be construed against the policy drafters. Therefore, insurance policy drafters

5. Id. at 1.
6. E.g., Smith v. Prudential Prop. & Cas. Ins. Co., 10 S.W.3d 846, 850 (Ark. 2000) (stating that "provisions contained in a policy of insurance must be construed most strongly against the insurance company which prepared it, and if a reasonable construction may be given to the contract which would
initially make the policy appear all encompassing, yet later readings reveal a multitude of exemptions to coverage. In other words, an insured must read the fine print, or the exclusions. Consequently, many case coverage decisions, both published and unpublished, are decided on a literal interpretation of specific policy language.⁷

Recently, in *Walker v. State Farm Fire & Casualty Co.*, an insured attempted to collect under his homeowner’s policy for his son’s default on a promissory note. Walter Walker, Stuart Walker’s son, however, forged the promissory note. State Farm’s homeowners insurance policy provided coverage for claims alleging bodily injury or property damage caused by an “occurrence.”⁹ Coincidentally, the insured’s umbrella policy was essentially identical. The debate over coverage began when the bank took action against Stuart Walker claiming that he was liable to the bank by reason of estoppel and intentional and negligent misrepresentation. Therefore, the issue became whether the bank’s claims against the insured allege physical damage to or destruction of tangible property as outlined in the definition of occurrence. The court answered the question in the negative because the only personal property involved was the money.¹⁰ Since the insurance policy defined personal property as, “discernible by the touch, or capable of being

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⁹ 569 N.W.2d 542 (Minn. Ct. App. 1997).

¹⁰ *Id.* at 544.

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touched," the Walker court reasoned personal property was the actual money, and not the promissory note. The court also rejected the "loss of use" argument because it maintained that there must be damage to physical property not simply interest in the property.\footnote{11} Finally, the court rejected the "reasonable expectations" argument made by the insured because there was no evidence that the State Farm agent promised unlimited coverage.\footnote{12}

Likewise, in \textit{Rohrer v. Rich},\footnote{13} the Minnesota Court of Appeals rejected the notion that prank phone calls could be construed as an "occurrence." In \textit{Rohrer}, the Traveler's insurance policy defined an "occurrence" as an accident, which results in bodily injury or property damage.\footnote{14} There, the insured began making harassing phone calls repeatedly to the Rohrer's home in the middle of the night. After the trial court included findings of facts in its judgment that Rick acted negligently, an award was entered for the Rohrers for $49,000. The Rohrers then began collection proceedings against Travelers. In rejecting the trial court's analysis, the court of appeals relied on \textit{Milbank v. B.L.G.} and \textit{Bituminous Casualty Corp. v. Bartlett}.\footnote{15} Accordingly, the court stated that while Rick acted negligently, he did not intend to harm the Rohrers, even though Rick and the Rohrers entered into a stipulation stating Rick indeed acted negligently. Rather, the court followed \textit{Gilman v. State Farm Fire & Casualty Co.}.\footnote{16} \textit{Gilman} stated that an insured's tackling a victim without his consent was not an accident even though the insured had no intent to injure; the "proper analysis" is whether the wrongful act or tortuous event was an accident.\footnote{17} The \textit{Rohrer} Court further defined "occurrence" as an accident caused by ordinary negligence. The issue of whether the insured had intent to harm was irrelevant in this analysis. Therefore, although "occurrence" cases will continue to be decided on a case-by-case basis, factual determinations will not be absolute. Policy language will continue to establish the parameters of coverage limitations. This analysis fol-

\begin{itemize}
\item \footnote{11} \textit{Id.} at 544.
\item \footnote{12} \textit{Id.} at 545.
\item \footnote{13} 529 N.W.2d 406, 408 (Minn. Ct. App. 1995).
\item \footnote{14} \textit{Rohrer}, 529 N.W.2d at 408.
\item \footnote{15} Bituminous Cas. Corp. v. Bartlett, 307 Minn. 72, 77 n.5, 240 N.W.2d 310, 313 n.5 (1976); Milbank Ins. Co. v. B.L.G., 484 N.W.2d 52, 58 (Minn. Ct. App. 1992).
\item \footnote{16} 526 N.W.2d 378 (Minn. Ct. App. 1995).
\item \footnote{17} \textit{Id.} at 409.
\end{itemize}
lows notions of ordinary negligence.

II. AUTOMOBILE EXCLUSIONS

Noska Analysis

A recent problem, however, has been determining if liability will arise when the accident in question contains elements of coverage included in both homeowner’s and auto insurance policies. Although *Waseca v. Noska*\(^{18}\) answered part of the question by separating what could happen independently from the intervening episode of driving an automobile, determining what exactly constitutes an “occurrence” or accident remains difficult to discern.

An automobile exclusion is ordinarily included in the homeowner’s policy exceptions. For example, under a homeowner’s policy, an insured will generally not recover for personal liability in an auto accident unless the vehicle is owned by a third party. As such, depending on the individual policy, an insurer will pay for damages because of or arising out of the maintenance, use, loading or unloading of only recreational vehicles or watercraft neither owned by nor available for regular use by any insured.\(^{19}\) Generally, insurers will cover losses for “motor vehicles not subject to registration by a state regulatory agency, which are used primarily for servicing and maintaining an insured premises,” or any automobiles left in dead storage.\(^{20}\) However, this is not always the case. The insured “premises” must also be the residence in some cases.

In *American Family Mutual Insurance Co. v. Van Gerpen*,\(^{21}\) the insurer claimed there was no coverage under the automobile exception in the policy. There, a four-year old boy was thrown from a tractor and killed on a parcel of land owned by the insured. The insurer claimed that the tractor was not used for the service of the insured residence and that the insured residence should not include the parcel of land where the accident occurred. The Court agreed, stating “we do not believe that any reasonable layman would understand the definition of ‘residence’ to encompass parcels of land which are devoid both of residents and of residential

\(^{18}\) 331 N.W.2d 917 (Minn. 1983).

\(^{19}\) Auto Owners Ins. Policy at 13 (on file with author).

\(^{20}\) *Id.*

structures." Therefore, even though an insured actually owns the property, coverage may not be available for losses occurring there.

In *Waseca Mutual Insurance Co. v. Noska*, the issue of concurrent causation was discussed. In *Noska*, an insured shoveled ashes into barrels and placed the barrels on a trailer and then towed the trailer. As the insured was driving the truck, ashes escaped from the barrel and started fires adjacent to the highway. The Minnesota Supreme Court determined that the fires were the result of two different acts, each of which was necessary to cause the damage. One distinct act, the negligent act of shoveling live embers into the barrels was covered under the insured’s homeowner policy according to the Court. In addition, the negligent act of towing the trailer with the barrels containing live embers was covered under the insured’s automobile liability policy. Therefore, these two acts were divisible even though the same person committed them because two different persons could have done them. This analysis has been used regularly in an attempt to cover large losses. *Noska* was arguably a “result oriented decision”; the *Noska* court clearly recognized the factual distinction of property damage greatly exceeding aggregate insurance coverage. Since *Noska*, the Minnesota Court of Appeals has decided a number of cases which have established precedent in allowing concurrent coverage. *Noska*’s progeny has been set forth as follows:

*North Star Mutual Insurance Co. v. Johnson*, 352 N.W.2d 791 (Minn. Ct. App. 1984). An accident occurred when the arm of a farm sprayer that was bolted to a pickup truck came loose, striking a motor vehicle traveling in the opposite direction. There was coverage under both a farm policy and automobile policy because there were two acts, one vehicle-related and one not;

*Progressive Casualty Insurance Co. v. Hoekman*, 359 N.W.2d (Minn. Ct. App. 1984), *rev. denied*. There was concurrent coverage for injuries sustained by the collapse of a

22. *Id.* at 887-88.
23. *Noska*, 331 N.W.2d at 921.
24. *Id.* at 919.
25. *Id.* at 920.
26. *Id.* at 923.
27. *Id.* at 920.
garage door after it was hit by a car;

*Jorgensen v. Auto-Owners Insurance Co.,* 360 N.W.2d 397 (Minn. Ct. App. 1985). The claimant was burned when a can of gasoline stored in the trunk of his father’s car exploded as he opened the trunk and he tried to remove it. The court held that both the automobile liability and homeowner’s policies applied because there were two acts, one vehicle-related and the other not;

*Pennsylvania General Insurance Co. v. Cegla,* 381 N.W.2d 901 (Minn. Ct. App. 1986), rev. denied. The accident occurred when a loose roll of wire mesh in Cegla’s truck fell onto the highway, causing a following motorcyclist to lose control. The motorcyclist was hit by a following pickup truck. The court held that the homeowner’s insurance company had to provide coverage because the act of placing the wire in the truck was a nonvehicle-related act. The auto liability insurer did not deny coverage;

*Auto-Owners Insurance Co. v. Selisker,* 435 N.W.2d 866 (Minn. Ct. App. 1989). The insured’s failure to take medication designed to control epileptic seizures was not a “divisible concurring cause of the accident” qualifying as “an independent nonvehicle-related act of negligence.” The court distinguished *Noska* because only one person could have committed the two acts;

*State Farm Insurance Cos. v. Seefeld,* 481 N.W.2d 62 (Minn. 1992). The claimant was injured while riding in a negligently constructed utility trailer pulled by a four wheel ATV. The court held that the negligent design and construction of the utility trailer was not an independent, nonvehicle-related, concurring cause of injuries that fell within coverage of mobile homeowner’s policy;

*Vang v. Vang,* 490 N.W.2d 647 (Minn. Ct. App. 1992), rev. denied. Failure to warn of a defective barn door was a separate cause from the negligent driving of motor vehicle that coincided with the failure to warn to cause the death of the decedent, justifying a finding of coverage under a farm liability policy.

*Mutual Service Casualty Insurance Co. v. Northern Lights Sports,* 1995 WL 46308 (Minn. Ct. App. 1995): “We hold that when the insured provides racer support services in order to benefit the insured’s business and, in doing so, loads a van with tools and spare parts and drives along the
route of the bicycle race providing mechanical assistance and rides to race participants, failure to provide spotters to warn of the presence of the van and its occupants is inextricably intertwined with the use of a motor vehicle and thus is excluded from coverage under the general liability insurance policy’s motor vehicle exclusion. 9

*Illinois Farmers Insurance Co. v. Goertzen, 1996 WL 175799 (Minn. Ct. App. 1996). The insured purchased alcohol for minors who drank the alcohol and became involved in an accident when one of the minors negligently drove a motor vehicle. The homeowner’s coverage of the insured was inapplicable because of the motor vehicle exclusion in the homeowner’s policy. The court of appeals read the dual coverage cases narrowly:

In *Seefeld*, the Supreme Court limited the application of *Noska* to causes that arise independently of each other and that could operate independently of a motor vehicle to cause the accident. Goertzen’s homeowner’s insurance policy expressly excludes coverage for bodily injury or property damage that results from the use of a motor vehicle. The injuries underlying this lawsuit resulted from a motor vehicle accident. As in *Seefeld*, Goertzen’s act of furnishing alcohol to a minor could not have operated independently of a motor vehicle to cause injuries that occurred in a motor vehicle accident.

In *Austin Mutual Insurance Co. v. Kande*, 30 the Minnesota Court of Appeals reversed a District Court ruling that allowed the insurer to recover damages under the failure to supervise a child theory. Oftentimes this theory is referred to as negligent supervision. In *Kande*, nine-year-old invited guest of the insured attempted to get on a motorcycle, which had just previously been ridden. The kickstand gave out, and the boy was burned when his leg came into contact with the hot muffler. Although the boy’s mother did not bring an action against the insureds, Austin Mutual brought a declaratory judgment action against the insureds and the mother, Rhonda Kande seeking a declaration that it had no obligation to defend or to indemnify the insureds for Rodney’s injuries. 31 The insured argued that the motorized vehicle exception did not pre-

31. Id. at 283.
clude recovery under a negligent supervision claim and that there basically is a concurrent causation situation as in *Noska*. However, in *Kande* the motorcycle was not being used for transportation purposes at the time of injury but had been recently used before the accident. Therefore, the Court determined that the motorcycle was "more than the situs of the injury and the use of the vehicle for transportation was an indirect cause of his injuries."\(^{32}\)

While the plain language of an insurance contract may exclude all injuries caused by an insured's use of a motor vehicle, the *Noska* analysis will allow recovery where a covered risk and an uncovered risk concur in causing the injury. Minnesota courts have recognized that certain fact situations involving separate acts of negligence that arise independently should allow recovery. Consequently, the logical extension of the Minnesota Court of Appeals holdings is that dual coverage cases will continue to be narrowly construed in the future.

In *Christie v. Illinois Farmers Ins. Co.*,\(^{33}\) the court of appeals held that there was no homeowner's insurance coverage for a snowmobile accident involving the insured's snowmobile being driven by Christie because it fell under the "motor vehicle" exception. The court further held that the reasonable expectations doctrine was inapplicable. The district court, in deciphering the insurance policy, stated that a snowmobile was not applicable as a "motorized land vehicle" because "land" could be construed as on "earth" as opposed to snow or ice.

Correctly, the court of appeals disagreed, looking to the obvious intent of the insurance policy to distinguish between vehicles for use in air or on water, not between vehicles used on land. In fact, the actual policy excluded coverage for "any other motorized land vehicle designed for recreational use off public roads."\(^{34}\) However, Illinois Farmers listed an exception to this exclusion, which included in its coverage motorized land vehicles not subject to motor vehicle registration and used only on an insured location. The court of appeals agreed with the insurer in determining that snowmobiles do not fit into this exception because they are commonly used on locations other than an insured's premises, or off public roads. Conversely, the insured argued that the snowmobile

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32. *Id.* at 284-85.
33. 580 N.W.2d 507, 509 (Minn. Ct. App. 1998).
34. *Id.* at 508.
was restricted to the insured location, attempting to gain coverage under the unregistered motorized land vehicle used "only on insured's property." However, the insurance company successfully argued that the proper definition is within a "recreational vehicle" and not within definition of the intended farm machinery or riding lawn motors covered under the policy.

Finally, the court, in citing *Sicoli v. State Farm Insurance* stated there simply is no reasonable expectation of coverage for a snowmobile. The reasonable expectations doctrine provides that when the application of policy language would be contrary to the objectively reasonable expectations of an insured, courts will interpret the policy according to those reasonable expectations, "even though a painstaking study of the policy would have negated those expectations." Generally, separate insurance is available to provide coverage for snowmobiles and four-wheelers.

### III. Named Insured

Homeowner's insurance policies provide coverage for the named insured in the policy, as well as for relatives or any other person under the age of 21 residing with the insured who is in the insured's care or the care of a relative. In *North Star Mutual Insurance Co. v. Raincloud*, a cabin guest did not qualify as an "insured" for an accident that occurred when she took control of the owners' ATV. Roxanne Raincloud, her two children, and a friend, went to visit insureds Richard and Donna Lian at the Lians' cabin. Raincloud was consuming alcohol at the time of the accident. The Lians gave Raincloud's daughter, Alicia, permission to ride the Lians' ATV. Roxanne then proceeded to go outside and ride on the ATV, apparently without asking permission for herself. She had both children on the back of the ATV when she lost control, causing it to rollover onto her daughter Amy, who died a short time later.

For purposes of recreational vehicle coverage, the Lians' homeowner's policy, issued by North Star Mutual defined an "in-
sured" as including persons using an ATV with the Lians' consent. An endorsement to the insurance policy excluded from its definition of insured "a person using an ATV without the Lians' permission." The issue then was whether Roxanne Raincloud had implied consent to ride the ATV since the Lians had given permission to her daughter, Alicia. The court, citing *Milbank Mutual Insurance Co. v. United Stated Fidelity & Guaranty Co.*, stated that had Roxanne Raincloud been driving a motor vehicle, she would have been an insured under the respondent's policies. This analysis is taken from the Safety Responsibility Act, which ensures that innocent accident victims are compensated by making an owner as well as an operator of a motor vehicle responsible for the behavior of the operator. The court also noted the trend to give the Act a liberal construction to effectuate its policy considerations. Interpreting the court's decision, "consent" is given where there is implied or express consent, making the operator an agent of the owner of the motorized vehicle in question.

However, the court did not extend this policy to ATVs. In his dissent, Justice Randall queries why the initial permission rule, stating that an ATV was not a motor vehicle and thus not under the scope of the Safety Responsibility Act. The ATV was insured under the homeowner's policy for the protection of the homeowner on his premises. The Court's analysis, while initially relying heavily upon the Safety Responsibility Act, fails to recognize that the *Milbank* analysis could be applied outside the scope of the Safety Responsibility Act for all motorized vehicles.

In *Raincloud* there may have been implied consent in light of the fact that Raincloud's daughter had consent. The analysis should end at that point because, as the Court states, the homeowner's policy is meant to protect not the general welfare of the public, but the homeowner's own protection. Here, the insured received no protection. Justice Randall states that the initial permission coverage on automobiles should be "employed at least as

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40. *Id.* at 271.
41. *Id.* at 271.
42. 332 N.W.2d 160 (Minn. 1983).
43. *Raincloud*, 563 N.W.2d at 272 (citing *Milbank*, 332 N.W.2d at 165).
44. *Milbank*, 332 N.W.2d at 165-66.
45. MINN. STAT. § 170.54 (1996).
stringently, if not more so, on ATV’s.\footnote{47} This is a noteworthy analysis since ATVs are commonly used on public roads and should be afforded the same legislative safety protection.

Earlier, in \textit{Lott v. State Farm Fire & Casualty Co.},\footnote{48} the Minnesota Supreme Court addressed the resident relative language of an insurance policy. There, Lott was at a party in which participants were drinking alcohol and jumping into the lake. In spite of the fact that Lott did not want to get wet, Scott Roesler threw Lott off a dock into the lake. As a result, Lott sustained a fracture in his right ankle, bone chips in the fracture area, and internal blood clots. Roesler’s mother, Zona, owned and insured the property. Roesler lived in Fargo but kept a speedboat at his mother’s cabin. Because Roesler’s mother owned the property, State Farm argued that Scott Roesler was not a resident of the household and therefore not a named insured. This was a difficult case because the premises happened to be a summer home with family members coming and going and the question of who qualified as an insured was set forth as dubious at best.

\section*{IV. INTENTIONAL ACTS}

Most homeowner’s insurance policies exclude losses for intentional acts by the insured. As in \textit{B.L.G.},\footnote{49} the intentional act analysis is not an easy one to apply. Generally, where there is “either actual intent to inflict bodily injury or such an intent can be inferred as a matter of law, the intentional act exclusion applies even if the injury caused is more severe or of a different nature than the injury intended.”\footnote{50} Unlike criminal acts exclusions, the intentional act exclusion is more difficult to identify. For instance, in \textit{Casperson v. Webber},\footnote{51} the plaintiff was working as a hat check girl at a restaurant when the defendant, the insured, assaulted her. The facts show he was unable to find his claim check and when plaintiff refused to look for his coat, he pushed her aside, forcing plaintiff to lose her balance and injure herself. After the plaintiff brought an action against the defendant alleging both assault and negligence, the insurance company refused to pay the claim, citing the intentional

\footnotetext{47}{Id. at 274.}
\footnotetext{48}{541 N.W.2d 304 (Minn. 1995).}
\footnotetext{49}{Milbank Ins. Co. v. B.L.G., 484 N.W.2d 52, 52 (Minn. Ct. App. 1992).}
\footnotetext{50}{Iowa Kemper Ins. Co. v. Stone, 269 N.W.2d 885, 887 (Minn. 1978).}
\footnotetext{51}{Casperson v. Webber, 298 Minn. 93, 213 N.W.2d 327 (Minn. 1973).}
act exclusion. While the trial court found the intentional injury exception applied, the Minnesota Supreme Court reversed, holding the assault and battery was not within the exclusion unless a reason for the act was to inflict bodily injury.

In Milbank Insurance Co. v. B.L.G., the court of appeals rejected the insurer’s argument that giving herpes to another person is “expected and intended” for exclusionary purposes under the homeowner’s policy. According to the court in B.L.G., even if an injury is “foreseeable,” it may still be an accident for purposes of an insurance policy. The court, syntactically splitting hairs, also goes on to state that an accident can include all negligently caused injury as long as it was not intentional. Here, according to the facts, shortly before M.M.D contracted herpes, B.L.G. had been treated for herpes, therefore knowing he had a communicable sexually transmitted disease. In other words, B.L.G. knew he was a carrier, yet intentionally slept with a woman, knowing she too would likely contract the disease. Contracting herpes then should be construed as “expected.” The issue then seems to be whether or not a reasonable, prudent person would fail to disclose this fact to another person with whom he intended to sleep. If not, then contraction of herpes would indeed be purely “accidental.” If so, it seems like an intentional act. (Note the Rohrer Court did not follow B.L.G., infra, however, where coverage turned on negligent behavior without an intent to harm. It is difficult to see where these two cases differ, unless it is purely politically motivated.

Earlier, in Gilman v. State Farm Fire & Casualty Co., the Minnesota Court of Appeals addressed the issue of occurrence. In Gilman, the plaintiffs were in the process of moving from their residence. Frank and Gail Gilman went to the bar for beers where they met Brian Larson, a friend of Gail and Jeff Gilman. Brian subsequently came over to the residence. Jeff left and then Gail left the party, went home and her husband assaulted her. Later, she returned to the party. After seeing her condition, Brian wanted to go find Jeff, and Frank tried to stop him. The two struggled and fell to

52. Id. at 96, 329.
53. Id. at 98, 330.
54. B.L.G., 484 N.W.2d at 59.
the ground. Frank then got up and Brian tackled him. During the
tackle, Frank suffered a broken ankle. He filed suit against Brian.56
The issue was whether this was an occurrence, or an accident. The
policy describes as an accident as “exposure to conditions, which
results in bodily injury.”57 The interrogatories submitted to the jury
asked as follows:

1. Was the incident in which Frank Gilman and Brian Larson
involved an accident?
2. Did Brian Larson intend to injure anyone?

The Gilmans argued that there was no difference between the
two questions, because if the injury was unintentional then it was ac-
cidental. The Gilmans therefore claimed that since the jury found
the injury unintentional, they were entitled to judgment as matter of
law. However, the Court of Appeals stated that the jury could find
that Larson intended to tackle Gilman but that he did not intend to
injure him. Thus, determining what constitutes an accident was just
as difficult as in B.L.G.58 The trial court stated that an “accident” is an
“unexpected, unforeseen or undesigned happening” and that it “in-
cludes all negligently caused injury, provided such injury was not in-
tentional.”59 However, the court of appeals, citing B.L.G., stated that
negligently transmitting herpes was an accident. It goes on to distin-
guish Hauenstein because it involved property damages and that there
was no wrongful conduct on the part of the insured. This is a faulty
distinction, because it goes on to attempt to distinguish Milbank from
this case by stating that it was a tort, an assault that was the cause of
the injury.60 The court stated that the “proper analysis requires the
fact-finder to determine whether the wrongful or tortuous event was
an accident.”61

This syntactical splicing operatively turns on an apparently sim-
ple analysis into an insured’s nightmare. It leaves everyone involved
to guess whether simple negligence is the standard or whether a
more convoluted definition of accident, which includes wrongdoing
and tortious acts is the standard. Negligence can be neither wrong-
doing nor tortious, but it also may be both. This is obvious.

56. Id. at 380.
57. Id. at 381.
58. Id. at 382.
59. Id.
60. Id. at 383.
V. RESIDENT RELATIVE

Determining whether an alleged insured is a resident relative may be determined by examining the policy to ascertain whether the alleged insured lived under the same roof as the named insured, in a close, intimate, and informal relationship. Other relevant factors include the alleged insured’s age, her level of self-sufficiency, the frequency and duration of her stays in the family home, whether she has established a separate residence and if so, whether she intends to return to the family home.

In an unpublished opinion, the Minnesota Court of Appeals reaffirmed the Minnesota Courts’ three-factor test in determining residency in an insured’s household. The court rejected the argument that since the Haeflingers listed their son on the umbrella application it satisfied the third prong of Viktora (citing State Farm Fire & Casualty Co. v. Short). The court stated the relevant time to examine family relationships is at the time of the accident, rather than at the time that the insured contracts for insurance.

In State Farm Fire & Casualty Co. v. Duel, a recent unpublished opinion, the issue of determining “when” was again addressed. There, Duel severely injured Shawn Reed by shooting him with a shotgun. Duel and Reed subsequently entered into a Miller-Shugart agreement whereby Duel agreed to a judgment against her, to be paid from her parents’ homeowner’s insurance policy issued by State Farm. Yet, the Court held that Duel’s act was intentional and therefore excluded from coverage. The facts show that Duel moved into her own apartment building thereby “severing” her from her parental responsibility. But the court in this case also analyzed intentional act exclusions. The homeowner’s policy excluded intentional acts which would be established by: (1) proof of an actual intent to injure; or (2) evidence that the character of the act is such that intent to inflict injury may be inferred as a matter of

61. Firemen’s Ins. Co. of Newark, N.J. v. Viktora, 318 N.W.2d 704, 706 (Minn. 1982).
64. State Farm Fire & Cas. Co. v. Short, 459 N.W.2d 111, 114 (Minn. 1990).
In *Duel*, under the language of the insurance policy, the Court concluded that Duel intended as a matter of law to injure Reed. 67

In *Allstate v. Burrough*, 68 an insured attempted to gain coverage when Burrough stole his grandfather's gun and gave it to a friend who in turn shot a boy in the neck. The insured's homeowner's policy included an exclusion for criminal acts. It states, "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." 69 This exclusion applies even if the person is not actually charged. The court concluded that notwithstanding the fact that Burrough was not charged, Burrough should "have reasonably expected that an incident like the one that took place would happen." 70

VI. NEGLIGENT SUPERVISION

In *Redeemer Covenant Church v. Church Mutual Insurance Co.*, 71 sex abuse victims brought an action against their church for negligently retaining and failing to supervise the pastor who committed the abuse. 72 The court of appeals held that exclusionary language in the church's policy did not apply to the church on three different grounds. First, the relevant policy provisions excluded from coverage "any criminal or malicious act or omission of any insured" and "licentious immoral or sexual behavior intended to lead to or culminating in any sexual act." 73 Second, the church was not the perpetrator of the excluded criminal or licentious acts. Third, the church's exposure for liability was for negligent supervision. Therefore, the relevant exclusions in Redeemer did not contain "arising out of" language, but excluded from coverage criminal acts and licentious behavior.

The Minnesota Court of Appeals recently addressed this distinction in an unpublished case, *Metropolitan Property & Casualty In-

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67. *Id.*
68. 120 F.3d 834 (8th Cir. 1997).
69. *Id.* at 836.
70. *Id.* at 840.
71. 567 N.W.2d 71 (Minn. Ct. App. 1997).
72. *Id.* at 74.
73. *Id.* at 77.
surance Co. & Affiliates v. Miller, stating, “the drafter of the insurance policy could have drafted its exclusions to cover injury or liability arising out of criminal acts of licentious behavior, but it did not do so.” There, the court affirmed a district court holding that a minor could not recover for negligent supervision against her mother based on a claim of sexual abuse perpetrated by her father. The court basically focused on the father’s conduct rather than the mother’s failure to prevent abuse, stating that the severability clause allows “each claim to be considered for coverage independently.” However, in his dissent, Judge Schumacher rightfully points out that Redeemer is distinguishable because it dealt with a professional liability insurance policy, which is more likely to cover acts of negligent supervision which was part of the insured’s professional duty.

Most insurance policies avoid court interpretation of such exceptions by excluding acts reasonably expected or intended by the insured.

VII. CONCLUSION

This article was written as a guide to understanding emerging issues in General Insurance Law. Certain cases were highlighted and discussed in an effort to identify developing trends as set forth by Minnesota Courts. Definitional expansions and contractions are occurring constantly. Consequently, similar fact situations may have vastly different results. Assuredly, future decisions will create additional impact upon insurance policy language.

75. Id. at *4.
76. E.g., Milbank and Auto Owners policies (on file with author).