

## **Indiana Supreme Court Decision Expands Insurance Coverage for Personal Injuries Caused by Criminal Conduct**

Liability insurance policies cover bodily injury damages caused by an “occurrence,” typically, and simply, defined as an “accident.” Liability policies further exclude from coverage claims for bodily injury “which is expected or intended by the insured.” Thus, claims for damages arising out of criminal acts and acts of violence historically have been viewed as falling outside of the coverage provided by liability policies. However, in *Auto-Owners Ins. Co. v. Harvey*, 842 N.E. 2d 1279 (Ind. 2006), the Indiana Supreme Court’s interpretation of this standard policy language greatly expands coverage for claims arising from criminal misconduct.

The specific facts are crucial to the holding in *Harvey*. Brandy Harvey, age 16, and Michael Gearheart, age 19, engaged in sexual intercourse on a boat ramp located on the Walbash River. At some point, Brandy told Gearheart to stop, and then began shoving him toward the water. At that point, Gearheart placed his hands on Brandy’s shoulders and pushed her backwards, causing her to fall off the edge of the boat ramp and drown. Gearheart was charged with, and plead guilty to, involuntary manslaughter. Brandy’s parents filed a wrongful death action against Gearheart, and his insurer, Auto-Owners, denied coverage on the grounds that Brandy’s death did not rise from an occurrence, defined as an accident under the policy, and, in the alternative, the claim for wrongful death was excluded from coverage because Brandy’s death resulted from the intentional misconduct of Gearheart.

Initially, the Indiana Court of Appeals predictably found that the insured’s act of pushing the victim who then fell into the river and drowned was an “accident,” and, therefore, not an “occurrence” within the meaning of the insurance policy. *Auto-Owners Ins. Co. v. Harvey*, 813 N.E. 2d 1190 (Ind. Ct. App. 2005). The Indiana Court of Appeals emphasized that an “accident” for insurance coverage purposes is an unexpected happening without intention or design, and since the insured had plead guilty to manslaughter, he knowingly or intentionally committed the crime which he was charged; thus, it was his conscious objective to push the victim into the water.

The Indiana Supreme Court, however, found differently. The Supreme Court affirmed the trial court’s denial of Auto-Owners’ motion for summary judgment, finding that the policy’s definition of “occurrence” was ambiguous, and, because Gearheart may not have intended for her to fall into the river, as he testified, her death may have arisen from an “occurrence.” The Court declined to hold that Brandy’s death, even though it resulted from the insured’s intentional act of pushing her, necessarily fell outside the concept of “accident” upon which “occurrence” was defined in the policy. Further, because Gearheart testified that he specifically did not intend for Brandy to be injured by his push, the intentional injury exclusion was not necessarily implicated. The Court determined that application of the intentional act exclusion requires the specific intent to cause harm, not just that the act causing the harm was volitional or intended. *Id.* at 1289-91. The Court determined that there was no evidence of specific intent to

cause harm, even considering that Gearheart pleaded guilty to involuntary manslaughter.*Id.* Thus, the intentional injury exclusion did not clearly exclude coverage even though Gearheart intended the action that ultimately led to Brandy's death.