[Brief to the Maine Law Court regarding extent of homeowners' insurance policy coverage for acts of sexual abuse. Coverage upheld by the Court. Names changed for privacy.]

STATEMENT OF FACTS

This is an action for declaratory judgment brought by Hanover Insurance Company (appellant) to determine whether it has a duty to defend and indemnify its insured, appellee Wilma Brown, under a homeowner's insurance policy. The co-appellee, Sally Brown, has sued appellant's insured and the insured's former husband, Paul Brown, in a tort case now pending in the Washington County Superior Court, but stayed pending the outcome of this case.

In this declaratory judgment case the appellant moved for summary judgment. The appellees agreed with the appellant that it was appropriate to resolve the insurance coverage issue by motion for summary judgment, but argued that judgment should be entered in favor of them rather than the appellant. The Superior Court (Marden, J.) agreed with appellees and entered summary judgment declaring that appellant must defend and indemnify Wilma Brown.

As recited in the complaint in the underlying tort action [Appendix pp. 3-6], Sally Brown is the (now adult) daughter of Paul Brown and Wilma Brown. As a young child, between the ages of five and ten years old, Sally Brown was frequently and repeatedly abused sexually by her father. This abuse occurred from 1976 through 1981.

Sally Brown has sued Paul Brown for his intentional acts against her, and has also sued her mother alleging only that Wilma Brown was negligent in failing to properly supervise and protect Sally Brown after discovering that Paul Brown had sexually abused her.[1]

It is Sally Brown's theory of negligence against her mother that the latter, after seeing one instance of sexual abuse, should have taken positive steps to make sure that there was no future opportunity for Paul Brown to abuse their daughter. The fact that the abuse instead continued for years would allow a fact-finder to conclude that there was a causal connection between the negligence of Wilma Brown and the injuries to Sally Brown.

Although appellant's brief makes a passing reference to its insurance policy not expressly extending coverage to Wilma Brown, appellant does not assert this as grounds for avoiding coverage. In any event, the appellant has waived any such claim.[2]

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[1] Although initially denying the abuse of his daughter, Paul Brown was deposed and admitted committing sexual acts with his daughter at least as frequently as every other week for a period of several years. He also described being discovered abusing his daughter on one occasion by his wife. A judgment was thereafter entered by stipulation against Paul Brown only, in the amount of $200,000.

[2] The policy itself, as provided by plaintiff, may be inadvertently incomplete or it may be just sloppily drafted. In the policy under Section II, Exclusions, §3(b) [Appendix, p. 17], there is a reference to "parts (1) and (2) of the [policy's] definition of 'Insured'." Such a definition section does not appear anywhere in the policy as provided. The context of this clause strongly suggests that there was intended a standard broad definition of the term "insured" which would include the named

Paul Brown has not claimed to be covered under the plaintiff's homeowner's policy for his intentional acts of sexual abuse, and therefore has not been a party to this declaratory judgment action. The issues to be decided relate solely to coverage for the negligent acts of Wilma Brown.

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insured's household members. It should also be noted that this section of the policy refers to the concept of "any Insured," while elsewhere the policy sometimes refers to the "Named Insured" and sometimes simply to "the Insured." Despite not having a section in this policy to look at clearly stating who in the household are insureds, this case has proceeded on the assumption that Wilma Brown was indeed an insured under this policy. See, e.g., appellant's Statement of Material Facts [Appendix, pp. 10-11], which fails to state as one of the grounds for disputing coverage that Wilma Brown was not an insured under the policy.

STATEMENT OF ISSUES ON APPEAL

I. Whether the Hanover policy used language excluding coverage for expected or intended injuries in a way that would apply to Wilma Brown?

II. Whether the Hanover policy's requirement of an "occurrence" excludes coverage for Wilma Brown?

III. Whether public policy prohibits insurance coverage for an insured whose negligence contributes to an injury resulting from sexual abuse by another person?

ARGUMENT

The appellant's brief advances three arguments for denying coverage to Wilma Brown: (1) a public policy against allowing insurance indemnification for a person's criminal behavior; (2) the insurance policy's requirement of an "occurrence"; and (3) the insurance policy's exclusion of injuries expected or intended by the insured. These arguments will be addressed in this memorandum in reverse order. None of them warrants interpreting the insurance policy to exclude coverage for Wilma Brown.

I. The Hanover policy failed to use the language necessary to exclude coverage for intentional acts in a way that would apply to Wilma Brown.

The insurance policy in this case contains a clause excluding coverage for "bodily injury or property damage which is either expected or intended from the standpoint of the insured." Appellant has asserted that this clause excludes coverage for Wilma Brown. Courts have universally held, however, that such an exclusion for "the insured" only means that the intentional actor (such as Paul Brown) may not claim coverage, and that co-insureds who are accused of being merely negligent are not excluded from coverage.

The appellant is aware from prior briefing done in this case that the overwhelming weight of authority is against its attempt to apply the quoted exclusionary language of its policy to the allegations against Wilma Brown, but it continues to raise the argument without citing any precedent. The appellant's brief [p.

3] just dismisses the contrary argument as a "fine semantical distinction."

A reading of the cases, however, demonstrates that courts have consistently been following the principle of requiring insurance companies to live up to the exact language of the policies they write. The expressions "the insured" and "an insured" have distinctly different meanings in the English language.

In a frequently cited case from New Hampshire, the parents of a 17-year-old boy who had assaulted a minor girl were sued for their negligence in not properly supervising him. Their homeowner's insurance policy excluded coverage for injury caused intentionally by "the insured." The Court held that:

> It is reasonable to assume that when the company used the definite expression "the Insured" in certain provisions of the policy and the more indefinite or general expression "any Insured" or "an Insured" in other provisions, it intended to cover differing situations which might come within the terms of the policy. [Citations omitted.] We are of the opinion that the provisions excluding from liability coverage injuries intentionally caused by "the Insured" was meant to refer to a definite, specific insured, namely the insured who is involved in the occurrence which caused the injury and who is seeking coverage under the policy. [Citation omitted.] Consequently the policy covers the named insureds, Thomas and Marjorie Lebrecht against liability for the intentional injury committed not by them but by their minor son . . . .

Pawtucket Mutual Insurance Company v. Lebrecht, 190 A.2d 420, 423 (N.H. 1963).

In Michigan, the appellate courts have contrasted the

situations in which the insurance policy excluded coverage for intentional acts by "the insured" and one in which a policy excluded coverage for intentional acts by "an insured." See *Vanguard Insurance Company v. McKinney*, 459 N.W.2d 316 (Mich. App. 1990) and *Allstate Insurance Company v. Freeman*, 443 N.W.2d 734 (Mich. 1989). The former case interpreted an insurance policy which excluded coverage for injuries either "expected or intended by the insured." The court held that this language only excluded coverage for the intentional tortfeasor himself, not his co-insureds. The *Freeman* case, on the other hand, interpreted a standard Allstate insurance policy clause which excluded coverage for intentional acts of "an insured." The court said this language meant "any" insured.

The Michigan Appellate Court made it clear that this distinction was <u>not</u> what the insurance company was labeling "irrelevant semantics" but rather was based on established English language usage in which the words "a" or "an" are indefinite articles and the word "the" is a definite article, referring to a specific person or thing. *McKinney*, 459 N.W.2d 316, at 319. That court quoted the *Freeman* court on the importance of strictly construing the words used by the insurance company as follows:

> Adherence to a correct usage of the English language in insurance contract construction promotes a uniform, reliable, and reasonable foundation upon which policyholders and insurers alike may rely when they enter into a contractual agreement.

Many other courts have made this same distinction depending on whether the policy's intentional acts exclusionary clause used the words "an insured" or "the insured." See, for example, *American States Insurance Company v. Borbor*, 826 F.2d 888 (9 Cir. 1987); *Allstate Insurance Company v. Foster*, 693 F.Supp. 886 (D. Nev. 1988); and *Allstate Insurance Company v. Roelfs*, 698 F.Supp. 815 (D. Alaska 1987). The principle also applies in other instances of policies which express exclusions in terms of "the insured." See, for example, *Western Casualty & Surety v. Aponaug Manufacturing Co.*, 197 F.2d 673 (5 Cir. 1952), and *Commercial Union Insurance Company v. Derry*, 387 A.2d 1171 (N.H. 1978).

No case has been found which interprets policy language excluding injuries expected or intended by "the insured" so as to have it exclude coverage for a merely negligent co-insured based on the actions of an intentional tortfeasor.

The reasoning of a 1978 decision from this Court is compelling precedent for following the distinction discussed above. See *Hildebrand v. Holyoke Mutual Fire Insurance Company*, 386 A.2d 329 (Me. 1978). Although this case involved a fire insurance policy rather than a liability policy, the decision required a determination of whether exclusionary language referring to "the insured" excluded all insureds or just the primary actor. In *Hildebrand* the insured husband had intentionally burned down the family home; his wife, also an insured under the policy, was innocent of the arson. The policy excluded coverage if "the insured" committed fraud. Though the

husband's arson was fraud, this Court said the exclusion applied only to the specific insured who committed the fraud and thus did not prevent recovery by the wife.

There has been no reason given by appellant in its brief why this Court should now depart from the universal holding that "the insured" refers only to the intentionally acting tortfeasor. Appellant instead attempts to equate Wilma Brown's negligent conduct with that of her husband's intentional conduct.

It should be noted that the description in appellant's brief about what Sally Brown alleges against Sally Brown greatly exaggerates the latter's culpability. See the appellant's brief, on page 6, where Sally Brown's conduct is referred to as a "known failure to stop the abuse" and "knowledge that the abuse is occurring." See also page 8 of appellant's brief where it states that "[t]he case against Wilma Brown does not involve an accident, but a knowing course of conduct guaranteed as a matter of law to result in injury." [Emphasis in original.]

However, the complaint in the tort action only alleges as follows:

> 6. In 1976, the defendant Wilma Brown discovered defendant Paul Brown engaging in sexual activities with plaintiff, but the said Wilma Brown failed to thereafter take action to assure that such sexual activities between her husband and their daughter ceased.
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> 7. Defendant Wilma Brown failed to supervise the plaintiff properly despite a foreseeable risk after 1976 of sexual assault on her daughter by her husband.

* * *

17. Defendant Wilma Brown failed to use reasonable care to prevent the foregoing sexual assaults and injuries to plaintiff and her resulting negligence foreseeably caused resulting damages to plaintiff.

Thus the complaint does not allege any ongoing knowledge by Wilma Brown of sexual abuse by Paul Brown, but only a duty to make sure that it was not continuing to happen, and to protect her daughter from it if it was. There is no fair way to interpret the underlying complaint in this matter as alleging that Wilma Brown's failure to protect her daughter was the equivalent of expecting or intending the injuries to her.

Thus the present case can be easily distinguished from *Perreault v. Maine Bonding*, 568 A.2d 1100 (Me. 1990), where the simple issue was whether there would be coverage for the intentional conduct of the child molester himself. In the present case the plain meaning of policy language excluding coverage for injuries expected or intended by "the insured" does not extend to barring coverage for the negligence of Wilma Brown.

II. The Hanover policy's requirement of an "occurrence" does not bar coverage for Wilma Brownian this case.

A slightly more metaphysical issue is raised by the appellant's argument concerning a requirement in the Hanover policy which states that liability coverage applies only when injury results from an "occurrence." That term is defined by the policy as:

> ... an accident, including injurious exposure to conditions, which results, during the policy term, in bodily injury or property damage.

[Appendix, p.17] This definition, however, does not remove all ambiguity. The term "accident" is not defined by the policy, and that word has proven itself to be the subject of much litigation and difficult interpretation. See the recent and thorough discussion of the concept of an "accident" in the case of *Allstate Insurance Company v. Patterson*, 904 F.Supp. 1270, 1276 (D. Utah 1996).[3] See also the Maine case of *Patrons-Oxford Mutual Insurance Company v. Dodge,* 426 A.2d 888 (Me. 1981), which involved a policy containing the same intentional act exclusionary language as the present case, as well as the same definition of an occurrence.

The appellant relies on *Mutual of Enumclaw v. Wilcox*, 843 P.2d 154 (Idaho 1992), in which the co-insured wife was alleged to have been negligent for not reporting the child abuse committed by her insured husband. As the appellant's brief indicates, the policy required an "occurrence" defined in part as "an accident." Although the Idaho court discussed the meaning of the term "accident," its review of the concept was superficial.

Defining an accident as something unexpected (see appellant's quotations from *Webster's Dictionary* on page 6 of its

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[3] In this case, parents were sued for the negligent supervision of their teenage boys who had sexually abused some younger boys. The court determined that Allstate would have to defend its insureds (even including the teenage tortfeasors) despite policy language requiring that the injury arise from an accident.

brief) is not the hard part in these cases. The problems arise when deciding such issues as whether the act must be inadvertent or just the injury, and whether it is the underlying event that must be looked at or if the focus should be on the particular person who is seeking coverage. This latter question comes down to whether the unexpected event must be looked at from the perspective of the intentional tortfeasor, the merely negligent co-defendant, or the victim. See, *Allstate Insurance Company v. Patterson*, *supra*, and the definition of "accident" in *Black's Law Dictionary,* which points out the uncertainty regarding the term.

Even in simpler two-party cases (with just an intentional tortfeasor and a victim involved) courts have been divided as to which party's perspective controls whether an accident has happened. Some cases have determined that one should view the event from the perspective of the victim, at least when the policy is otherwise silent. This interpretation of an "accident" led many insurance companies to rewrite their policies to specifically indicate that the question was to be looked at from the point of view of the insured. See *Patrons-Oxford Mutual Insurance Co. v. Dodge*, *supra,* 426 A.2d, at 890-891, for a discussion of this historical change in policy writing and even the subsequent difficulties with the term "accident."

The Hanover insurance policy in the present case does not state that the occurrence must be an accident from the point of view of the insured. It thus leaves the definition of accident ambiguous: Does it mean that the injury to Sally Brown must be

unexpected from the point of view of Paul Brown, from the point of view of Wilma Brown, or from the point of view of Sally Brown herself?[4]

In the case of *Auto Club Group Insurance Company v. Marzonie*, 527 N.W.2d 760, 764 (Mich. 1994), in which the insurance policy also failed to indicate whose perspective would control, the Michigan Supreme Court said:

> From our review of the policy language, we cannot glean any intent with respect to perspective because it simply is not addressed. Accordingly, where the policy is silent with respect to perspective, we would hold that the accidental nature of the event must be evaluated from the injured party's standpoint. . . . [Citations omitted.] In other words, by not designating the perspective in the policy, we would construe this ambiguous language against the insurer and would hold that the injured party's perspective controls.

In *Enumclaw*, *supra*, relied upon by the appellant, the Idaho court looked to the spouse's alleged negligent conduct in not reporting the sexual abuse and declared that there was not an "occurrence" because her negligence was not the conduct which caused the injury, even though (as the court concedes) it may have contributed to the environment which permitted the child molesting. The court was therefore using a very narrow concept of causation, looking only at the underlying event, and failed to address the fact that the injuries were an accident both from the

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[4] The Hanover policy does use the language of "from the standpoint of the insured" in that part of the policy dealing with the intentional act exclusion, but there is no basis for assuming that we can cut and paste that clause into the separate section which defines an occurrence.

point of view of the negligent spouse and from the point of view of the victims.

The *Enumclaw* decision does not follow the broader interpretation of an "occurrence" or "accident" causing injury which other courts have used, and those other cases are more persuasive. For example, in *Allstate Insurance Company v. Worthington*, 46 F.3d 1005 (10 Cir. 1995), which is the only case so far to discuss *Enumclaw*, the Court of Appeals reached the opposite conclusion. In *Worthington*, the insured husband took several people hostage and killed one of them. His co-insured spouse was sued by the deceased's family on the grounds that she had negligently failed to warn the victim. The policy said the claim must arise from an "accident." The Court of Appeals nevertheless ordered Allstate to defend and indemnify the allegedly negligent spouse, and declined to follow the reasoning of *Enumclaw*. Pointing out that courts generally hold that an "accident" includes results negligently caused by the insured, the majority opinion for the Court said:

> Allstate's "no accident" argument goes too far we believe; it would seem to relieve the insurer from providing a defense to any suit brought against a nonacting insured -- e.g., when husband inadvertently dropped a substance on a walkway that caused injury and the injured party sues both insured spouses. As stated above, we believe Utah would more likely follow the courts that look to the actual allegations of negligence and not the "underlying actions."

46 F.3d, at 1010. Thus the Court of Appeals held that it is from the perspective of the insured who is alleged to be negligent

that one looks to determine whether the event was an accident.

In *Armstrong v. Security Insurance Group*, 288 So.2d 134 (Ala. 1973), the insurance policy at issue required an "occurrence" and defined it specifically as "an accident ... neither expected nor intended from the standpoint of the insured." (This language is more specific than Hanover's policy.) But still there was a question of the standpoint of which insured was being referred to -- the intentionally acting husband or his negligent spouse? The Alabama Supreme Court held that the event (a shooting committed by the husband) was an accident from the wife's perspective and that it was her perspective which was relevant in determining her insurance coverage.

In *Unigard Mutual Insurance Company v. Argonaut Insurance Company*, 579 P.2d 1015 (Wash. App. 1978) the court had to interpret an insurance policy which had exactly the same definition of "occurrence" as appears in the Hanover policy in the present case. In *Unigard* an insured child of the co-insured parents set fire to a school. The parents were sued for negligent supervision. The court concluded that the fire was an "accident" from the point of view of the parents, and that that was controlling. The court said:

> We agree with Unigard that public policy prevents an insured from benefitting from his wrongful acts; but here, as in other cases which have considered the question, it is not the intentional act of the parents which has caused the damage. Precedent and the language of the Unigard insurance policy require coverage for Mr. and Mrs.

Hensley.

Closer to home, the Massachusetts Supreme Judicial Court has interpreted similar "occurrence" and "accident" language in a "Special Multi-Peril" policy which provided liability insurance to a day care center. Many children at the center were sexually abused by some staff members; other staff members allegedly knew of the abuse but did nothing to stop it. The Court noted:

> The knowledge of one of the tort defendants concerning the abusive activities of the others, coupled with the failure to protect the children, renders that tort defendant's conduct reckless.
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> * * *
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> Generally, injuries resulting from reckless conduct do not fall into the category of "expected or intended" injuries, but are considered "accidental" and thus are covered under insurance policies.

Worcester Insurance Company v. Fells Acres Day School, Inc., 558 N.E.2d 958, 970 (Mass. 1990).

Thus these courts have held that when there is an intentional acting tortfeasor and an allegedly negligent co-insured, the policy requirement of an "occurrence" or an "accident" should be looked at from the point of view of the allegedly negligent party. These courts would therefore hold that the policy's requirement of an accident in the present case has been met with regard to Wilma Brown.

In deciding this case this Court should follow the often stated principle that it "will construe conditions and exceptions of the insurance contract, inserted therein in an attempt to

limit the coverage ..., strictly against the insurer and liberally in favor of the insured." *Patrons-Oxford Mutual Insurance Co. v. Dodge*, *supra,* 426 A.2d, at 889. See also *Massachusetts Bay Insurance v. Ferraiolo Construction Corp.,* 584 A.2d 608, 609 (Me. 1990) ("... a liability insurance policy must be construed so as to resolve all ambiguities in favor of coverage") and *Baybutt Construction Corp. v. Commercial Union,* 455 A.2d 914, 921 (Me. 1983) ("... a standard policy of insurance ... being the crafty product of insurers who made the policy, selected its language, and ordained its particular structure, should be interpreted most strongly against the insurer").

Finally, the Hanover policy in this case defines an occurrence to be not only an accident but also as including "the injurious exposure to conditions." This language further strengthens the argument that this policy provides coverage to Wilma Brown. While no cases have been found specifically interpreting the quoted expression, a fair reading suggests that it was intended to broaden the term "accident" to include not just sudden events (like falls down stairs, collapses of structures, or explosions) but chronic, long term conditions such as gradual poisoning. The long term poisoning of Sally Brown's life by five years of sexual abuse is just such an occurrence.

III. Public policy does not prohibit insurance coverage for an insured whose mere negligence contributed to an injury from sexual abuse.

As indicated in part I of this brief, the present case is

vastly different from the sex abuse case of *Perreault v. Maine Bonding*, *supra*. There this Court held only that it was against public policy to indemnify a child abuser for his own criminal conduct, a principle with substantial precedent behind it.

But in the present case it is Wilma Brown's merely negligent conduct which is in issue. See the discussion, *supra* at pages 9-10, regarding the negligence allegations in the tort complaint against her. Public policy of course does not prohibit indemnifying a person for negligent conduct. If it did, there would be no market for the liability insurance policies which Hanover likes to sell.

As the New Hampshire Supreme Court said in *Pawtucket Mutual Insurance Company v. Lebrecht*, *supra*, providing coverage to the innocent co-insured does not violate the public policy against providing coverage to a person for his willful wrongs:

> There is no such policy against insurance to indemnify an insured against the consequences of a violation of the law by others without his direction or participation, or against his own negligence, or the negligence of others.

190 A.2d, at 424. This language was quoted with approval by this Court in *Hilderbrand v. Holyoke Mutual Fire Insurance Company*, *supra*, 386 A.2d, at 331-2. See also *Armstrong v. Security Group*, *supra*, 288 So.2d, at 136.

The United States Court of Appeals for the Ninth Circuit discussed these public policy issues in *American States Insurance Company v. Borbor*, *supra*, as follows:

> The public policy against insurance for losses

> resulting from [intentional] acts is usually justified by the assumption that such acts would be encouraged, or at least not dissuaded, if insurance were available to shift the financial burden of the loss from the wrongdoer to the insurer.
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> * * *
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> This policy, however, does not apply when the wrongdoer is not benefitted and an insured who is innocent of the wrongdoing receives the protection afforded by the contract of insurance.

826 F.2d, at 895.

The *Perreault* case indicated that it was outside of the contemplation of the average person to think that coverage for criminal sexual abuse of children was part of a homeowner's policy. This dictum has encouraged the appellant to conclude that <u>any</u> case involving injury by sexual abuse, regardless of the circumstances or the parties, will fall beyond the scope of insurance coverage. This is really just an appeal to emotion, based on the abhorrence we all have for sexual abuse of children.

The dictum in *Perreault* regarding what is or is not "within the contemplation of the average person" should not become the touchstone for interpretation of insurance policies. It has never before been a basis for deciding insurance coverage issues and, if adopted, could produce a whole new universe of litigation opportunities. It comes as a surprise to most people, for example, to learn that a homeowner's insurance policy provides general liability coverage for them beyond the boundaries of their property. It certainly would surprise the average person to learn that this Hanover homeowner's policy, like many such

policies, provided liability coverage to the insureds for their operation of certain small boats.[5] Compared to that coverage, it is not much of a surprise to find out that the negligent supervision of a child could be covered by a homeowner's policy. Consider, for example, a claim for an injury to a child who is injured in a household accident after being left with the insured for babysitting.

The principal point remains, however, that whether an insured actually understood in advance the full extent of the liability coverage he or she was purchasing in a homeowner's policy has never been grounds for limiting that coverage.

The appellant suggests that imposing liability on an insurance carrier in the present situation is a "back door" method of circumventing the prohibition of coverage established by *Perreault* because "for every molester there is bound to be a spouse or significant other who was arguably in a position to detect and report the molestation." This assertion does not appear to be based on anything but speculation. It also ignores how thankfully rare is the situation in which one spouse learns that the other is committing sexual molestation of a child and does not thereafter take whatever steps are necessary to absolutely protect the child. If appellant is implying that false claims will be made, it and other insurance carriers can

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[5] See Section II of the Policy, Exclusions, §1(b), which excludes coverage only for large horsepower boats. [Appendix, p. 17]

simply defend and prove the claims to be without merit.

Ultimately, of course, insurance companies can write into their policies an exclusion for this type of case, as they have done already to exclude many other claims. As the Court of Appeals said in *Allstate Insurance Company v. Worthington*, *supra*, 46 F.3d, at 1010, "[i]f Allstate wants its homeowner's insurance policies to exclude coverage for all insured persons for an excluded act by any insured person, it can do so by careful drafting." See also, *Allstate Insurance Company v. Patterson, supra,* 904 F.Supp., at 1289.

Appellant also suggests that if claims such as this are allowed it will cause premiums to increase in order to spread the losses among all insureds. That red herring probably is asserted in every case concerning coverage issues. It assumes that Hanover will not learn from its mistakes and revise its policies. And, again, it is fortunate that the number of cases like this one is very small, a fact which avoids any great assault upon insurance company coffers.

While it is true that some purchasers of homeowner policies might wonder why their premiums should be higher to provide insurance protection to persons who get sued for negligent failure to protect a child, they might just as well wonder why, if they don't operate small boats, they should be paying premium money to provide homeowner's coverage for those who do. The answer to this egocentric approach to insurance coverage is, of course, that we generally purchase insurance as part of a large

pool of people who are engaged in a variety of different activities. While one person's activities may not be the same as the next, on average we are considered by insurance companies to be similar risks, so we are offered broad coverage for a comparable premium.

In considering public policy arguments in the present case it should be remembered that liability insurance not only seeks to indemnify us from the consequences of our negligent acts, but it also serves to protect our injured victims. See 7A Appleman, *Insurance Law and Practice* (Berdal ed.) Section 4492.02, at 27, and *Patrons-Oxford Mutual Insurance Co. v. Dodge*, *supra*, 426 A.2d, at 890. Courts have gone so far as to say that there is a public interest in compensating the victims of even intentional acts. See *Ambassador Insurance Company v. Montes*, 388 A.2d 603, 607 (N.J. 1978) and *MacKinnon v. Hanover Insurance Company,* 471 A.2d 1166, 1168 (N.H. 1966).

Compensation of victims is a public policy argument which is actually relevant to this case, unlike the appellant's argument that no coverage should ever exist in the case of sexual abuse, regardless of circumstances.

CONCLUSION

Thus the Hanover Insurance Company policy in this case does not exclude coverage for Wilma Brown merely because the injuries caused by Paul Brown were expected or intended on his part; there was an "occurrence" within the requirements of the policy; and

the better public policy arguments run in favor of coverage in this case, not against it. To uphold insurance coverage for Wilma Brown is not to condone sexual abuse of children in any way; it is only to honor long standing principles applicable to the interpretation of insurance policies which favor the insured when there is ambiguity in the policy. For these reasons the decision of the Superior Court should be affirmed.

DATED: _____

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