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Tragic crash involving intoxicated minor deemed reasonably foreseeable and not an "accident" for which insurance coverage applies.

By Ashley S. Zaleski

According to a recent decision from the Michigan Court of Appeals a homeowner's policy did not cover liability for a college student who served alcohol to a minor because the resulting automobile crash was deemed reasonably foreseeable, and not accidental.

In the case of *Depositors Insurance Company v Luera-Harris*, unpublished, issued January 13, 2015 (Docket No. 318269), the Court held that the homeowner's insurance policy did not apply to the claims at issue because the bodily injury was not caused by an accident, as it was reasonably foreseeable that it would occur.

On the night of January 29 to 30, 2011, Jordan Henika and his college roommates hosted a party and provided alcohol to the partygoers, including Brett Johnson who was a minor. Johnson, Harris, Cochran, and Bossenbery decided to leave the party. Johnson, who was legally intoxicated, decided to drive the vehicle. He lost control of the vehicle and crashed into a tree killing the other three passengers. The estates later sued Johnson, Henika, and Henika's roommates for their wrongful death.

SECREST WARDLE NOTES:

Over-serving adults does not create liability on the social host under current Michigan law, however, serving alcohol to minors is actionable. An insured should never expect that their policy will shield them from over-serving minors.

The Michigan Court of Appeals in *Luera-Harris* makes it clear that the threshold to be applied in these types of cases is: whether it was reasonably foreseeable or reasonably should have expected that serving a minor excess amounts of alcohol, and then letting the minor get behind the wheel and drive would lead to a crash. The Court of Appeals decision may make it more difficult for an insured to establish that an "accident" occurred because it was reasonably foreseeable that the unintended injury would occur. Interestingly, the Court notes that it does not matter that the harm that did occur exceeded the harm that the insured actually expected.

The issue was whether the accident was an intentional act which was precluded under Henika's father's homeowner's policy. The trial court in the coverage action held that the accident was not an occurrence as defined in the policy as it was reasonably foreseeable that harm would occur when he provided alcohol to minors.

Subsequently, the Court of Appeals analyzed whether an intentional act may be an accident. The Court found that intentionally providing alcohol to minors and the resulting automobile crash constituted an "intentional act" for which there can be no coverage. The Court heavily relied upon *Allstate Ins Co v Morton*, 254 Mich App 418; 657 NW 2d 181 (2002), which held that "the provision of alcohol to the minors did not constitute an accident within the meaning of the insurance policy because the insured reasonably should have expected that giving minors enough alcohol to allow them to pass out would result in harm."

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The Court examined *Morton* and found that its rationale controls the outcome of the present case. The Court held that in both cases the actual harm was not caused by providing the alcohol, but through acts of the minor who consumed the alcohol. It does not matter if the actual harm was inflicted by a third party (Johnson) so long as the insured (Henika) should have reasonably expected that harm would occur. Similarly, it does not matter that the harm that occurred exceeded the harm that Henika could have expected. Further, the Court remarked that Depositors Insurance only needed to show that Henika provided enough alcohol to the minors for him to reasonably foresee that it might impair their ability to drive. The Court ultimately found that there was no occurrence within the meaning of the insurance policy because Henika's actions created a harm that was reasonably foreseeable, not accidental, and resulted in a tragic crash.

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We welcome your questions and comments.

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