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A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

Accidents are in the Eye of the Insurance Holder

By Benjamin P. Rizza **May 27, 2025**

In *American Select Insurance Co v Michele Inhmathong and Ryan Cyong Le-Nguyen*, ___ Mich App ___ (May 9, 2025) (Docket No. 370037), the Court of Appeals defined the extent and scope of what constitutes an "accident" under a homeowner's policy.

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An 'accident' by its plain reading can include an action which was intentional, but for which the following consequences were not. Such an event is seen through the point of view of the insured who did not fire the gun.

American Select issued a homeowner's policy to Inhmathong as the sole insured on a policy which covered accidents resulting in either bodily injury or property damage. The policy provided for payment to the insured for damages or suits "caused by an occurrence" or "accident," but did not otherwise define the term. An exclusion for this coverage consisted of bodily injury or property damages "which is expected or intended by an insured, even if … resulting [in] bodily injury or property damages[.]"

In June 2021 (within the time period of the policy), Le-Nguyen, the insured's housemate at the time, shot CAD, a minor, in the front yard of Inhmathong's home by blindly firing through Inhmathong's living room window. The bullet struck CAD's upper arm and Le-Nguten was arrested. CAD filed suit against both Le-Nguyen and Inhmathong for negligence. Le-Nguyen had stated that he bought the gun for safety as the home was in a dangerous neighborhood. When he heard a bang outside he got scared and blindly shot through the window.

American Select argued that the insurance policy did not provide coverage for the defense or indemnity for CAD's claims because the shooting was not an "occurrence" as defined by the policy because no "accident" occurred. It also argued that Inhmathong, as the homeowner, should have known that the injury would occur because guns were knowingly kept in the home and therefore the shooting resulted in harm that was to be expected. The trial court granted the motion, finding that the underlying negligence claim by CAD did not allege an "occurrence" and therefore the policy did not provide coverage for the lawsuit.

I. The Court of Appeals Defining an "Accident" is one of Perspective

The Court of Appeals first made the consideration on whether CAD's injuries amounted to an "occurrence" or "accident." It found that there was no evidence to suggest that Le-Nguyen *intended* to shoot CAD when he blindly shot out the window without looking. On this basis, concluding that CAD being shot was anything other than an accident was in error.

Because the policy did not define "accident," pursuant to contract law the Court held that, "When the meaning of a term is not obvious from the policy language, the commonly used meaning controls." Citing *Frankenmuth Mut Ins Co v Masters*, 460 Mich 105 (1999).

The Court then stated that, "**An 'accident' is not restricted to an unintentional act**." Citing *Allstate Ins Co v Freeman*, 432 Mich 656 (1989). "[A]scertaining the insured's 'intent' may determine whether the insured's actions constituted an 'accident,' but it does not necessarily follow that an insured must act unintentionally for an act to be an 'occurrence.'" *Id*. Clarified further, "[I]f both the act and the consequences were intended by the insured, the act does not constitute an accident." Citing *Allstate Ins Co v McCarn*, 466 Mich 277 (2002). However,

> **"[o]n the other hand, if the act was intended by the insured, but the consequences were not, the act does constitute an accident, unless the intended act created a direct risk of harm from which the consequences should reasonably have been expected by the insured."**

However, the analysis did not stop there; essential to this analysis was to whom it is applied. Here, the analysis applied to the insurance policy's named insured, not the actor who blindly shot the gun out the living room window. Therefore, the Court focused on the question as it pertained to *Inhmathong's* point of view, since she was the sole insured on the policy. Whether the incident was an accident depended on whether Inhmathong (a) intended the act, and (b) intended the consequences which followed that act — "[T]he relevant consideration is whether Inhmathong intended both the injury-causing act and its consequences." *McCarn*, 466 Mich at 282.

The Court found that there was no evidence that Inhmathong intended for Le-Nguyen to blindly fire the gun, nor was there evidence that Inhmathong intended for the bullet to strike CAD. From Inhmathong's standpoint, the shooting was entirely an accident.

II. The Insured's Expectation that Injury would Occur

The second test was whether Inhmathong had the "expectation" that the injury would occur. The relevant inquiry in this case was whether CAD's injuries were the natural, foreseeable, expected, and anticipated result of Inhmathong permitting Le-Nguyen to reside in her home with firearms. However, record evidence showed that this incident was entirely "isolated and unusual." There were no prior incidents, no issues with the neighbors, and evidence that Le-Nguyen had no issues with the children in the neighborhood. Ultimately, the extensive evidence that was available did not establish *as a matter of law* that Inhmathong (who was not at home at the time) intended or expected that the shooting would occur and therefore, summary disposition was not warranted.

We welcome your questions – please contact:

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