UNDER THE GUN: THE INSURANCE INDUSTRY'S ROLE IN GUN RELATED INCIDENTS, PAST, PRESENT AND FUTURE.

I. Introduction

Throughout the history of the United States, debates have raged over gun rights and gun control. There have been several high profile events in recent history which have pushed these issues to the forefront of the political and social spectrum and have ignited fierce debates about the topic.[1] There have also been recent events which have called into question the insurance industry's involvement in accidental and self-defense shootings.[2] The insurance industry, although often times an afterthought in these debates, stands to play an important role in the future of gun rights, gun control and civil litigation involving gun related incidents.

II. Current Types of Gun Insurance Coverage

Before delving into the role the insurance industry may play in gun-related incidents, it is important to understand how the industry is involved and intertwined with these issues. There are several types of policies that provide insurance coverage for gun related incidents. The most common of these are homeowners insurance, renters insurance and commercial general liability insurance. These policies usually cover incidents involving unintentional and unexpected shootings.[3] There are, however, other policies provided by non-traditional insurance providers which cover intentional acts, including self-defense shootings.

A. Homeowners insurance and Renter's Insurance

[1] See *infra* Parts II and III

[2] See *infra* Part III.

[3] Robert L. Cherry, Jr., *Homeowner's Insurance Liability, Was It "Expected or Intended"?: The Courts Decide*, 16 MIDWEST L. REV. 80, 80 (1999).

The primary purpose of homeowners and renters insurance is to provide package coverage for homeowners and renters.[4] These packages often include general liability coverage for an insured's tortuous conduct which may occur at any place on or off the insured premises.[5] The format for the liability insurance coverage is "all risk" which is limited by exclusions.

Although most insurance agencies create their own policy forms, many of them are similar to the forms set out by the Insurance Services Offices (ISO).[6] The standard ISO (HO-3)[7] policy language for personal liability states as follows:

> If a claim is made or a suit is brought against an "insured" for damages because of "bodily injury" or "property damage" caused by an "occurrence" to which this coverage applies, we will:
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> 1. Pay up to our limit of liability for the damages for which the "insured" is legally liable. Damages include prejudgment interest awarded against the "insured"; and
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> 2. Provide a defense at our expense by counsel of our choice, even if the suit is groundless, false or fraudulent. We may investigate and settle any claim or suit that we decide is appropriate. Our duty to settle or defend ends when the amount we pay for damages resulting from the "occurrence" equals our limit of liability.[8]

Form HO-3 defines "occurrence" as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions, which results, during the policy period, in: a. "Bodily injury"; or b. "Property damage.""[9] Thus, injuries and damages caused by the unintended or unexpected discharge of firearms may be covered under the policy.

In order to limit the insurer's liability, in the 1960's and 1970's, insurance companies began including exclusions.[10] Traditionally, policies included an exclusion to bodily injury or

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[4] 46 C.J.S. INSURANCE § 1348 (2013).
[5] Id.
[6] ISO is the leading source of information about property/casualty insurance risk. ABOUT ISO. http://www.iso.com/ (Last visited August 20, 2013).
[7] The HO-3 form is the most commonly purchased policy. TYPES OF HOMEOWNER'S INSURANCE POLICIES. http://thismatter.com/money/insurance/types/types-of-homeowners-insurance.htm. Find at http://www.hcpci.com/policy_forms.html. (follow link entitled "HCPC HO 03 12 10 Special Form")
[8] ISO Form No. HCPC HO 03 12 10, at 19.
[9] ISO Form No. HCPC HO 03 12 10, at 2.
[10] Cherry, *supra* note 3 at 80.

property damage caused by an act "[w]hich is expected or intended by one or more "insured."[11] This exclusion is viewed from the standpoint of the insured.[12] Under this language, potentially any intentional firing of a gun, including acts of self-defense, would be excluded from coverage under the policy.[13]

Mindful of the potential gap of coverage which existed for justified, but intentional shootings in self-defense, many insurance companies, including the standard ISO form, have recently included the following language to compensate for the gap:

> 1. Expected or Intended Injury
> "Bodily injury" or "property damage" which is expected or intended by an "insured" even if the resulting "bodily injury" or "property damage":
> a. Is of a different kind, quality or degree than initially expected or intended; or
> b. Is sustained by a different person, entity, real or personal property, than initially expected or intended.
> **However, this Exclusion E.1. does not apply to "bodily injury" resulting from the use of reasonable force by an "insured" to protect persons or property**; (emphasis added).[14]

Under this language, a shooting in self-defense would be covered if it resulted from the use of "reasonable force."

Exclusions also commonly exist for explicit criminal acts.[15] Some polices include language barring claims from any criminal act or omission, while other policies contain more limited language. The breadth of these exclusions will be covered in more depth later in this article.[16]

B. Commercial General Liability Insurance

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[11] ISO Form No. HCPC HO 03 12 10, at 19; *see* Long v. Coates, 60 Wn. App. 710 (Wash. Ct. App. 1990). ('The exclusion of intentional injury from coverage stems from a fear that an individual might be encouraged to inflict injury intentionally if he was assured against the dollar consequences").
[12] Id.
[13] See infra Part III.
[14] See infra Part III.
[15] What to Know About Gun Insurance Law. http://www.law360.com/articles/427224/what-to-know-about-gun-owner-liability-insurance (Last visited August 20, 2013).
[16] See infra Part III.

The standard commercial general liability (GGL) insurance policy originated in 1940 under the title of "comprehensive general liability."[17] The standard form has undergone five principle revisions since that time, the most recent of which came in 1986 when the name of the policy was changed from "comprehensive" to "commercial." [18] CGL policies are designed to protect business owners against the risks associated with running a business.[19] CGL policies are generally designed to protect against tort liability for damages to persons or property and not for business contractual liabilities or economic losses.[20] Similar to homeowner's and renter's insurance policies, CGL policies cover certain risks and then include exclusions to those risks which limit coverage.[21] Most modern CGL policies are written on standardized forms developed by the ISO.[22] The CGL form developed by ISO provides similar exclusions for "expected or intended" injuries as the form developed for homeowner's insurance.[23] As such, most accidental shooting are covered under common CGL policies, however intentional shootings, including shootings in self-defense, are not.

Some insurance providers include express exclusions for the use of firearms in their CGL policy. In *Capitol Specialty Ins. Corp. v. JBC Entm't Holdings, Inc.*, the insured owned a nightclub where a shooting occurred by an unknown assailant, causing injury to one of the nightclub's patrons. An exclusion in the insured's CGL policy stated: "[t]his insurance does not apply to ... '[b]odily injury' or 'property damage' that arises out of, relates to, is based upon or

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[17] 9A COUCH ON INS. § 129:1 (2012).
[18] Id.
[19] Id.
[20] Id.
[21] Id.
[22] Id.
[23] The agreement states: "We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages." An exclusion applies to ""Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property." 2001 CGL policy, find at http://www.equispec.com/files/coverage_forms/travelers/CG0001.pdf

attributable to the use of a firearm(s)."[24] The insured argued that the exclusion was ambiguous in that an average purchaser of the insurance would interpret it to mean that the use of the firearm would have to be in connection with the business to fall under the exclusion. [25] The court disagreed and held that coverage was excluded..[26]

D. Excess and Umbrella Coverage

Another method by which an insured may obtain coverage for the use of firearms is through purchasing an excess or umbrella insurance policy. The purpose of such policies is to protect the insured in the event of a catastrophic loss.[27] Therefore, they only take affect after the underlying policy has been exhausted.[28] Excess policies generally increase the dollar amount of coverage which is available under an insured's base policy but do not offer any additional coverage that is not offered in the underlying policy.[29] Umbrella policies, however, can provide coverage for situations where an underlying insurance policy provides no coverage at all.[30] Therefore, an insured that is not afforded coverage for gun-related incidents in its primary insurance policy may purchase an umbrella insurance policy to secure such protection. Several

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[24] Capitol Specialty Ins. Corp. v. JBC Entm't Holdings, Inc., 172 Wn. App. 328, 335 (Wash. Ct. App. 2012).
[25] Id. at 335-336.
[26] Id; *see also* Braxton v. United States Fire Ins. Co., 651 S.W.2d 616 (Mo. Ct. App. 1983) (CGL Policy language included in an addendum excluding coverage for "bodily injury and property damage arising out of the ownership or use of any firearm." The policy's reprinted exclusions stated that coverage did not exist for injuries arising out of certain enumerated acts committed by, for or on the behalf of the named insured. The court found that the firearms exclusion did not exclude acts "arising out of the ownership or use of a firearm by *any* person under *any* circumstance." The court further held that a reasonable person could conclude the exclusion only applied if the insured owned or used the firearm in connection with his business or if someone used the firearm for or on behalf of the insured).
[27] 15 COUCH ON INS. § 220:32 (2012).
[28] Id.
[29] Id.
[30] Dolly v. Old Republic Ins. Co., 200 F. Supp. 2d 823, 840 (N.D. Ohio 2002).

insurance companies specifically offer liability coverage for shootings in self-defense in the form of an umbrella policy. [31]

E. Self-Defense Insurance

There are several insurance options offered by non-traditional providers for individuals who which to obtain coverage for gun-related incidents beyond their homeowner's, renter's, or CGL insurance policies. The largest providers of such are the National Rifle Association (NRA), the United Concealed Carry Association (USCCA), and Evolution Insurance Brokers (EIB). In addition, there are a few smaller regional insurers that also provide such coverage.[32]

The NRA provides its members with the ability to purchase excess personal liability insurance which includes coverage for:

> **(i)** "bodily injury" or **(ii)** "property damage" caused by an "occurrence" and arising out of use by the "Individual Insured Member" of a "firearm", airgun, bow and arrow or trapping equipment, but only while engaged in the following activities: **(i)** Hunting or trapping on public or private land; **(ii)** Shooting at competitions or for recreation at Hunt Clubs, Gun Clubs or supervised commercial or private "ranges"[33]

"Occurrence" is defined as "an accident, including continuous or repeated exposure to conditions, which results in "bodily injury" and/or "property damage" neither expected nor intended from the standpoint of the "Individual Insured Member."[34] Based on the "expected nor intended" language,[35] this policy would exclude self-defense shootings.

To combat this exclusion, the NRA allows its members to purchase a rider to the excess personal liability coverage which provides coverage for self-defense. The rider provides

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[31] Michael Cooper and Mary Willams Walsh, *Buying a Gun? States Consider Insurance Rule*, NYTIMES, (Feb 21, 2013) http://www.nytimes.com/2013/02/22/us/in-gun-debate-a-bigger-role-seen-for-insurers.html?pagewanted=all&_r=2&.

[32] Jay McDonald, *Gun Owners Seek out Self-Defense Insurance*, BANKRATE.COM (Feb 1, 2013), http://www.bankrate.com/finance/insurance/gun-owners-seek-self-defense-insurance.aspx.

[33] Find at http://www.locktonrisk.com/nrains/forms/Excess_Personal_Liability_Certificate_of_Insurance.pdf

[34] Id.

[35] See Infra Part III.

coverage for bodily injury or property damage caused by the use of a legally possessed firearm by a member engaged in an act of self-defense.[36] An act of self-defense is defined as

> [D]efending one's person, or other persons who may be threatened, or one's property by the actual or threatened use of a "legally possessed firearm"[37] as may be authorized by any applicable local, state or federal laws of the state or jurisdiction within which the "bodily injury" or "property damage" occurs.[38]

Compared to the recent ISO policy language, the NRA rider does not provide a specific requirement of "reasonableness" in order to have coverage for self-defense shootings, but does include the caveat that the shooting must be authorized by local, state and federal laws.

Along with providing coverage for civil matters, the rider provides for reimbursement of expenses incurred in the defense of criminal charges as well. The policy provides:

> With respect to any "act of self-defense"...of this policy for which the "Individual Insured Member" is criminally charged with a crime involving a "legally possessed firearm" to which the "Individual Insured Member" pleads not guilty by reason of an "act of self-defense" and said criminal charge is dismissed or the "Individual Insured Member" is acquitted due to an "act of self-defense", Underwriters have no obligation to provide a defense to the criminal charge; but Underwriters will reimburse the "Individual Insured Member" for the reasonable costs and expenses of his/her defense up to a maximum of $50,000 for any one and all criminal charges in excess of any other valid and collectible insurance only if all criminal charges are dismissed or the "Individual Insured Member" is acquitted of all criminal charges.[39]

Although the NRA does not provide counsel in defense of criminal charges, it will provide compensation for the expenses associated with the defense.

The USCCA also offers coverage for self-defense. The USCCA Self-Defense SHIELD offers coverage for both criminal and civil liability. Unlike self-defense insurance offered by the

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[36] Find at http://www.locktonrisk.com/nrains/forms/Self-Defense_Certificate_of_Insurance.pdf

[37] "Legally Possessed Firearm" means "a "firearm" possessed by the Individual Insured Member in accordance with any applicable local, state or federal laws of the state or jurisdiction within which the "bodily injury" or "property damage" occurs." Id.

[38] Id.

[39] The rider also provides: "grand jury or pre-indictment investigation which requires the insured to retain counsel and which results in favor of the insured whether by a verdict of not guilty, a formal dismissal of the criminal charge or indictment, or a declaration from the prosecuting attorney(s) that he or she does not intend to prosecute, (often referred to as nolle prosequi), the insured, would apply as if all charges were acquitted. Id.

NRA, USCCA does not provide individual underwritten insurance policies.[40] Instead, the policy is owned by USCCA and its members are beneficiaries of the policy.[41] Similar to the coverage provided by the NRA, USCCA does not provide an attorney for criminal matters, but will reimburse the member for the costs associated with hiring an attorney if the member used the gun in self-defense.[42] The policy also provides several exclusions to coverage, including criminal acts and acts arising out of the use of a firearm by a member who was under the influence of any intoxicating substance, alcohol, narcotics or controlled substance.[43]

The Evolution Insurance Brokers (EIB) offers coverage for concealed carry weapons permit holders, whether they carry on the job or just for personal use. [44] The rate and options available under the policy are customizable to fit each applicant.[45] According to underwriter Parker Lindsey, "it's kind of like a car. It starts about $200 a year and then as you add things to it, the premium increases."[46] The company uses factors such as if you are carrying while on the job, what kind of job you have, the percentage of time you carry, and location to determine the premiums and price of the coverage.[47] Lindsey provides a reason why such coverage may be needed: "Not everyone's going to deal with a loss. Not everyone's going to have to use their gun. If you have to use your concealed weapon defending yourself, it could still be a case that you used it the wrong way and you could have to defend yourself in court."[48]

F. Conclusion

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[40] *Self Defense Shield*, USCCA.COM, https://www.usconcealedcarry.com/shield/ (Last visited August 20, 2013).
[41] Id.
[42] Id.
[43] Find at https://www.usconcealedcarry.com/pdf/USCCA-Memberkit-Booklet-2013_6-6-13_WebVersion.pdf.
[44] Stephanie K. Jones, *Interest in Personal Gun Liability Insurance Protection Increasing*, INSURANCEJOURNAL.COM, (Apr. 11 2013), http://www.insurancejournal.com/news/national/2013/04/11/288010.htm.
[45] Id.
[46] Id.
[47] Id.
[48] Id.

When an initial civil suit is filed regarding a gun related incident, most defendants do not initially consider the fact that they may have coverage under their homeowners, renters or CGL policies.[49] Further, most gun owners do not realize that their standard insurance policies may not provide coverage in self-defense shootings. Despite this lack of awareness, the insurance industry plays a vital role in the outcome of litigation concerning gun related incidents. Therefore, it is important for an insured to understand just what types of situations are covered under their policy. Unfortunately, as set out in the next section, state courts have been inconsistent in their interpretation and application of common policy language.

II. Current Coverage Issues

On February 26, 2012, George Zimmerman, a neighborhood watch captain in Sanford, Florida was on patrol when he reported a "suspicious" person in the neighborhood, Treyvon Martin. Zimmerman and Martin were eventually involved in a confrontation, the end result of which was Zimmerman shooting and killing Martin. Zimmerman claimed that the shooting was in self-defense, but was eventually charged with second-degree murder. On July 13, 2013, Zimmerman was acquitted of all criminal charges, however, a civil suit for wrongful death may still be in the works.[50] Although the popularity of this case in the media stemmed from issues involving race, the "stand your ground" rule, and gun control, the facts of the case present several important issues relating to gun insurance, mainly whether or not Zimmerman would have coverage under a typical homeowner's insurance policy if a civil suit were filed against him. The first issue to consider is how would Zimmerman's insurance policy be interpreted? Secondly, what effect, if any, would Zimmerman's claim of self-defense have on coverage?

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[49] Chery, *supra* note 3 at 80.

[50] Tom Schoenberg and Christie Smythe, *George Zimmerman's Aquittal Sparks talk of Civil Lawsuit*, BLOOMBERG.COM, (July 15, 2013), http://www.bloomberg.com/news/2013-07-14/george-zimmerman-s-acquittal-sparks-talk-of-civil-lawsuit.html.

Third, if Zimmerman was found guilty or had pled guilty to criminal charges, how would this affect his coverage? Fourth, what effect, if any, would a criminal acts exclusion clause have on coverage? Finally, would the insurance company be obligated to provide a defense for Zimmerman?

A. Interpretation of Expected or Intended

The interpretation and application of the "expected or intended" exclusion clause has been a source of complication among state courts. Because insurance policies are interpreted and enforced according to their own specific language,[51] state courts have interpreted this clause in several different ways.[52] Further, the location of the language in the policy often differs. Some policies include this language as part of their definition of an occurrence which must be satisfied to initiate coverage, while others, including the ISO, include the language as part of their exclusions to coverage.[53] The following sections present common problems courts have struggled with concerning how to interpret the "expected or intended" language and examples of different interpretations which have been reached.

1. Difference between "expected" and "intended"

Most courts have not expressly considered whether or not the terms "expected" and "intended" are synonymous. However, there are some courts who have found that they are synonymous, while other courts have found they require different standards of proof.

For example, in *Grange Mut. Casualty Co. v. Thomas*, the court held that a provision excluding coverage for "expected or intended" was no different in substance than a provision

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[51] Cite

[52] Chery, *supra* note 3 at 80.

[53] 31 A.L.R. 4th 957 (originally published in 1984) (Most contemporary Insurance policies provide coverage on an occurrence basis, which is most commonly defined to mean "an accident which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured." While other policies exclude coverage for bodily injury or property damage which is "caused intentionally by or at the direction of the insured" or is "expected or intended" by the insured).

excluding "intentional" injuries.[54] The court reasoned that by giving meaning to the "expected" term in the exclusion, it would have to exclude from coverage any injury from an unintentional tort which a jury might classify as being expected based on a degree of likelihood under the facts.[55] This could end up excluding acts of negligence and gross negligence, for which the insurance was specifically procured to protect against. [56]

However, in *Bay State Ins. Co. v. Wilson*, the court reasoned that that if the terms were meant to be synonymous, then there would be no purpose in including both in the insurance policy exclusions.[57] The court held that a greater degree of proof is required to establish intent as compared to expectation, thus they have different meanings and applications. [58]

2. Construction of Intended

Courts have differed as to the standard by which an insured's intent is to be judged. Some courts hold that the insured must have intended to commit the act and to cause some kind of injury which is of the same general type[59], even if the injury caused was not the one intended. For example, in *Hartford Fire Ins. Co. v. Wagner*, the insured's son was involved in a number of burglaries with one of his friends.[60] In a plan to divert attention from his friend in connection with the burglaries, the two planned to stage a burglary and the insured's son was to shoot his friend with the intent to only wound him.[61] However, the insured's son missed his target while shooting at the friend and ended up shooting him in the heart, killing him.[62] A wrongful death

[54] Grange Mut. Casualty Co. v. Thomas, 301 So. 2d 158, 159 (Fla. Dist. Ct. App. 2d Dist. 1974)
[55] Id.
[56] Id.
[57] Bay State Ins. Co. v. Wilson, 96 Ill. 2d 487, 494 (Ill. 1983)
[58] Id.
[59] *See* State Farm Fire & Casualty Co. v. Levine, 389 Pa. Super. 1, 4 (Pa. Super. Ct. 1989) (The general type of injury is a composite of many factors, including the nature and character of the injury, the location of the injury and the magnitude of the injury.)
[60] Hartford Fire Ins. Co. v. Wagner, 296 Minn. 510, 511 (Minn. 1973)
[61] Id.
[62] Id.

suit was brought against the insured which sought compensation under the insured's homeowners policy.[63] The policy contained an exclusion for intentional acts.[64] The court held that even though the severity of the injury was not intended, the insured's son still intended to cause injury to his friend, and thus, there was no compelling reason either as a matter of public policy or law to hold that the exclusion was inapplicable.[65]

Other courts have held that the injury itself must have been intended for the exclusion to apply. In *Sabri v. State Farm Fire & Casualty Co,* the insured's adult daughter was involved in a domestic dispute with her husband and sought refuge late at night at her the insured's home.[66] The daughter did not give advance notice of her intention to stay at her father's home prior to her arrival.[67] The father heard the daughter struggling to enter the home.[68] Mistaking her for an intruder, the father shot and injured her.[69] The daughter brought suit against her father for her injuries.[70] The insurer argued that the insured's actions were excluded from coverage under the "expected or intended" clause in the policy because the insured intended to shoot the gun at his daughter.[71] The court held that the "expected or intended" exclusion meant that liability was not precluded for an expected or intended act but rather for an expected or intended injury.[72]

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[63] Id.
[64] Id.
[65] Id; *compare with* S. Mut. Ins. Co. v. Mason, 213 Ga. App. 584 (Ga. Ct. App. 1994) (Insured intentionally pointed a gun at victim and pulled the trigger under the mistaken belief that the gun would not fire. Court held, "If one has loaded a gun in such a manner as to reasonably believe that the gun will not fire, an injury which results from the gun firing is neither expected nor intended"); *see also* Ohio Cas. Ins. Co. v. Henderson, 189 Ariz. 184 (Ariz. 1997) ("if the act was intentional and there was either a subjective desire to cause some specific harm (intent) or substantial certainty (expectation) some significant harm would occur, then the insured will not be heard to say that the exclusion does not apply because the injury was more severe or different from what was intended").
[66] Sabri v. State Farm Fire & Casualty Co., 488 So. 2d 362, 363 (La.App. 3 Cir. 1986).
[67] Id.
[68] Id. at 364.
[69] Id.
[70] Id.
[71] Id. at 365
[72] Id.

Therefore, since the insured did not intend to injure his daughter, the exception was not applicable in this matter.[73]

3. Actual or Inferred Intent

The intent to cause some injury may be either actual or inferred. Courts have differed on what test should be used to determine if intent can be inferred as a matter of law.[74] For example, in *Barton v. Allstate Ins. Co.*, the insured returned to his trailer where he lived with his estranged wife late one night after being out drinking.[75] At the time he returned, his wife was with another man and upon hearing her husband knocking on the door, had the man hide in the bathroom.[76] When the insured entered the trailer, he proceeded to enter the bedroom and asked his wife where the other man was.[77] His wife denied that there was anyone else there, at which time, the insured noticed that the bathroom door was closed.[78] After kicking the door once, the insured pulled out his gun and fired a shot into the bathroom, which struck the man inside.[79] The man brought a suit against the insured for injuries he suffered as a result of the gun shot.[80] The insurer attempted to deny coverage based on an intentional acts exclusion in the insured's policy.[81] The court stated that liability is not precluded for an intentional act, but is precluded for an expected

[73] Id. at 366.
[74] *See e.g.* Russell v. Cincinnati Ins. Co. (In re Russell), 285 B.R. 877 (Bankr. M.D.N.C. 2001) (Intentional acts exclusion from coverage under a liability policy applies if act is intended to cause injury or damage or substantially certain to cause injury or damage), Heshelman v. Nationwide Mut. Fire Ins. Co., 412 N.E.2d 301, 302 (Ind. Ct. App. 1980) ("intent may be established either by showing an actual intent to injure, or by showing the nature and character of the act to be such that intent to cause harm to the other party must be inferred as a matter of law."), Am. Family Ins. Co. v. Walser, 628 N.W.2d 605, 613 (Minn. 2001) ("[T]he inference of intent to injure as a matter of law arises when the insured acted in a calculated and remorseless manner or when the insured's actions were such that the insured knew or should have known that a harm was substantially certain to result from the insured's conduct."), *and* Allstate Ins. Co. v. Campbell, 128 Ohio St. 3d 186, 195 (Ohio 2010) ("the doctrine of inferred intent applies only in cases in which the insured's intentional act and the harm caused are intrinsically tied so that the act has necessarily resulted in the harm).
[75] Barton v. Allstate Ins. Co., 527 So. 2d 524, 525 (La.App. 3 Cir. 1988)
[76] Id.
[77] Id.
[78] Id.
[79] Id.
[80] Id.
[81] Id. at 525-526.

or intended injury. [82] The court held that even though the man was behind a closed door, the insured should have been well aware that his act of firing the gun into the door was substantially certain to cause injury to the man.[83] Therefore, even though he didn't possess actual intent to cause injury, his actions fell within the intentional exclusion in his homeowners insurance policy because his actions were substantially certain to result in injury.[84]

Other courts have required a lesser showing to determine inferred intent. In *Freightquote.com, Inc. v. Hartford Cas. Ins. Co.,* the court held that an intentional acts exclusion clause does not require a showing that the insured acted with specific intent, or even with the belief that his actions were substantially certain to cause injury.[85] It must only be shown that the injuries were a natural and probable result of the actions of the insured.[86]

The Minnesota court may have provided the best guidance on the issue when it stated, "[t]here is no bright line rule as to when a court should infer intent to injure as a matter of law; rather, the determination is made through a case by case factual inquiry."[87]

4. Construction of Expected

The courts which have held that "expected" is separate from "intended" have also struggled with whether or not to view the expectation from an objective or subjective standard. In *Jenkins v. Koester*, the court held that "expected" is "essentially subjective, but tempered by a determination of whether the insured's subjective expectations are so absurd and unrealistic that they cannot possibly be taken seriously"[88] The court established a two-part test to determine

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[82] Id.
[83] Id.
[84] Id.; *compare with* Safeco Ins. Co. v. McGrath, 63 Wn. App. 170 (Wash. Ct. App. 1991) (Court held that intent by the insured was a question of fact for the jury where insured shot gun in the direction of the victim but testified he was not intending to hit him but just scare him away).
[85] Freightquote.com, Inc. v. Hartford Cas. Ins. Co., 397 F.3d 888, 893 (10th Cir. Kan. 2005)
[86] Id.
[87] Am. Family Ins. Co. v. Walser, 628 N.W.2d 605, 613 (Minn. 2001).
[88] Jenkins v. Koester, 2007 Mich. App. LEXIS 2028, 6 (Mich. Ct. App. Aug. 28, 2007).

whether or not an act was "expected." First, a determination must be made as to whether the insured actually foresaw, expected or anticipated that the injury would occur.[89] If not, was the injury so overwhelmingly and likely to occur that the insured's claim that he did not foresee, expect or anticipate the injury fly in the face of all reason, common sense and experience.[90]

5. Conclusion

It is unlikely that courts will ever reach unanimity in interpreting the "expected or intended" exclusion clause.[91] Therefore, it is important for the insurer and the insured to understand how courts in their state have interpreted the language and make efforts to define and clarify exactly what is excluded under the clause to match the intent of the parties. [92]

B. Self-Defense

A common factual scenario where courts are split on how to interpret the intentional acts exclusion in an insurance policy is when the insured shoots in self-defense.

Some courts have held that the possible legal justification of self-defense does not prevent the exclusion of an otherwise intentional act from the intentional act exclusion clause of an insurance policy. In *Clemmons v. Am. States Ins. Co.*, the insured was target shooting at a landfill with one of his friends when two strangers approached. One of the strangers took a rifle from the insured's friend and started walking away with it. The insured told the stranger to bring it back, at which point, the stranger pointed the gun at the insured. In reaction, the insured shot the stranger with his pistol. At this point, the other stranger entered the insured's vehicle where the insured had left a shotgun. The insured then shot the other stranger twice, fatally wounding

[89] Id.
[90] Id.
[91] John Dwight Ingram, *The "Expected or Intended" Exclusion Clause in Liability Insurance Policies: What Should It Exclude?*, 13 WHITTIER L. REV. 713, 721 (1992).
[92] Chery, *supra* note 3 at 80.

him.[93] The Florida court was asked to determine whether or not coverage existed for the insured under a policy which excluded coverage for acts either expected or intended from the standpoint of the insured. The Court determined that the moral justifications accompanying an act of self-defense by the insured did not change the fact that he acted with the intention of harming the strangers.[94] Therefore, his actions were within the exclusion of his insurance policy, and no coverage existed.

Other courts have held that the "expected or intended" language does not bar coverage based on the underlying policy behind the exclusion. In *Safeco Ins. Co. of Am. v. Tunkle*, the insured shot an intruder in his home several times and was acquitted of criminal charges based on his claim that the shooting occurred in self-defense. [95] The insured's insurance policy included a clause which excluded coverage for an act which is "expected or intended by any 'insured' or which is the foreseeable result of an act or omission intended by any 'insured.'"[96] The court found that the public policy behind the intentional act exclusion was to deny protection for illegal, wanton and malicious acts. The court held that self-defense was the opposite of willful wrongdoing, and although volitional, was not an intentional act within the meaning of the policy.

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[93] Clemmons v. Am. States Ins. Co., 412 So. 2d 906, 907 (Fla. Dist. Ct. App. 5th Dist. 1982).

[94] The court analogized the insured's actions in the present case with those in a case where a shooting was not in self-defense, stating: "Each did the same act: intentionally discharging a firearm while intentionally aiming it toward another human being. Each caused the same obviously foreseeable immediate result: the projectile intentionally sent forth struck the human to which it was intentionally directed and, as was to be expected, inflicted serious bodily injuries. Each did his act for a specific ultimate purpose or motive: Draffen to avoid being caught, Leeper to avoid harm to himself. Each can fairly and charitably be assumed to have preferred to accomplish his ultimate purpose (the avoidance of capture or the avoidance of harm to himself) without the necessity of causing injury to another. Each found he was in a dilemma and had to make a choice between inflicting injury on another or not achieving his ultimate desire. Each made a decision and decided to inflict injury rather than suffer the alternative presented. Without regard to the difference between Leeper and Draffen, morally and under criminal law concepts, when each intentionally caused bodily injuries to another by intentionally shooting him, each acted within their insurance policy exclusion, notwithstanding that the ultimate purpose of each was to accomplish a distant objective or goal quite beyond and detached from the intended act of shooting and the immediate obvious result of thereby inflicting serious bodily harm." Id. at 909-910.

[95] Safeco Ins. Co. of Am. v. Tunkle, 997 F. Supp. 1356, 1357 (D. Mont. 1998).

[96] Id.

[97] Therefore, the intentional acts exclusion clause does not preclude coverage for acts of self-defense. A similar result was reached in *Western Fire Ins. Co. v. Persons*, where the court held:

> One who has acted in self-defense has not used insurance coverage as a license to commit wanton and malicious acts. In fact, someone properly acting in self-defense is, by definition, not acting unreasonably. [citation omitted] That person is not committing conduct that the intentional act exclusionary provision is intended to discourage. Consequently, if an insured can plead and prove self-defense, this will bar exclusion from coverage under an intentional acts provision of the applicable insurance policy.[98]

The determination as to whether or not the "expected or intended" language bars coverage in cases of self-defense shootings largely rests on how the court chooses to interpret the policy language. Courts which look at the plain meaning of the "expected or intended" exclusion clause are more likely to determine an act of self-defense, although justified, is still an intentional act by the insured and within the exclusion language. In comparison, courts which look at the public policy behind the "expected or intended" exclusion language are more likely to hold that the intent of the language is to bar coverage for wrongful and criminal acts, not legally justifiable acts, and therefore, the exclusion does not apply to acts of self-defense.

C. Effect of Criminal Charges and Convictions

Another widely disputed topic is the effect that a criminal conviction or guilty plea has on the intentional acts exclusion clause in an insurance policy. Most courts have held that a jury conviction or an insured's plea of guilty to criminal charges does not conclusively establish the insured's intent.[99] However, some courts have found that a jury conviction or plea of guilty to criminal charges can conclusively establish intent for the purposes of the exclusion clause.[100]

1. Criminal Convictions

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[97] Safeco Ins. Co. of Am. v. Tunkle, 997 F. Supp. 1356, 1360 (D. Mont. 1998).
[98] Western Fire Ins. Co. v. Persons, 393 N.W.2d 234, 237 (Minn. Ct. App. 1986).
[99] 35 A.L.R. 4th 1063 (Originally published in 1985).
[100] Id.

In *Continental Casualty Co. v. Parker*, the President of the insured construction company was involved in an altercation with an outside inspector.[101] As a result of the altercation, the President was convicted for the criminal offense of assault, despite contending that it was an accident.[102] The general liability insurance policy issued to the insured included a clause excluded acts that were "expected or intended."[103] The court held that judgment or acquittal rendered in a criminal prosecution cannot be used as evidence in a civil matter to establish the truth of the facts on which it was rendered.[104] Therefore, the court left it up to a jury to determine whether or not the President's actions were expected or intended. [105]

Other courts have reached the opposite conclusion. In *Travelers Indem. Co. v. Walburn*, the insured was involved in an altercation outside of his home when the shotgun he was holding fired and killed another person.[106] The insured was charged with second degree murder, but contended that it was accident.[107] He was later convicted of second degree murder by a jury and a wrongful death civil action soon followed.[108] The insured sought coverage from his homeowner's insurance policy.[109] The court reasoned that if a jury could find beyond a reasonable doubt that the insured intended or expected to cause bodily harm to the victim, "it would be an exercise in futility for this Court to retry the same issues."[110] Therefore, the court ruled that the conviction could be admitted as conclusive proof of the underlying facts on which

[101] Continental Casualty Co. v. Parker, 161 Ga. App. 614, 614-615 (Ga. Ct. App. 1982).
[102] Id. at 617.
[103] Id. at 614.
[104] Id. at 617.
[105] Id.; *see also* Rockford Mut. Ins. Co. v. Shattuck, 188 Ill. App. 3d 787, 790 (Ill. App. Ct. 2d Dist. 1989) (Proof of a criminal conviction for murder was admissible as prima facia evidence of an intentional act. The insured was then allowed to present evidence to rebut this presumption which raised an issue of fact to be decided by the jury).
[106] Travelers Indem. Co. v. Walburn, 378 F. Supp. 860, 861 (D.D.C. 1974)
[107] Id.
[108] Id. at 861-862.
[109] Id. at 862.
[110] Id. at 865.

it was based.[111] The court determined that since the jury could not have convicted the insured of second degree murder absent a clear determination that the killing was with malice, the insured was excluded from coverage under the policy.[112]

In *Burd v. Sussex Mut. Ins. Co.,* the insured was involved in a shooting incident where he shot and injured another man.[113] The insured was charged and convicted of atrocious assault and battery in relation to the shooting.[114] In a subsequent civil case filed by the injured party, the insured attempted to deny coverage under the insured's homeowners insurance policy by admitting the conviction as conclusive proof that the insured's actions fell within the intentional act exclusion in his policy.[115] The court stated that a conviction may be admitted as conclusive proof in some appropriate cases.[116] However, in this matter, the court held that collateral estoppel would not be appropriate.[117] First, holding the conviction as collateral estoppel would not be appropriate because the plaintiff in the subsequent civil suit was not a party to the criminal conviction.[118] Second, it would be appropriate in this matter because it was not clear whether the jury in the criminal conviction held divisive the facts with respect to the insurance coverage issue.[119]

Ultimately, whether or not a court will hold that a criminal conviction is conclusive evidence to establish the "expected or intended" exclusion applies, will likely depend on the criminal charge and facts upon which the conviction is based.

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[111] Id.
[112] Id. at 868; *see also* Aetna Casualty & Surety Co. v. Sprague, 163 Mich. App. 650 (Mich. Ct. App. 1987) (Insured was charged and found guilty of first degree murder, which conclusively established that the insured had expected or intended the victim's death and coverage was excluded).
[113] Burd v. Sussex Mut. Ins. Co., 56 N.J. 383, 386 (N.J. 1970).
[114] Id.
[115] Id. at 387-388.
[116] Id. at 397-399.
[117] Id. at 397.
[118] Id. at 398.
[119] Id.

2. Pleas

Similar to criminal convictions, courts have differed as to how to handle criminal guilty pleas. In *Garden State Fire & Casualty Co. v. Keefe*, the insured fired pellets from a shotgun which struck the victim in the arm.[120] The insured eventually plead guilty to charges of atrocious assault and battery, while testifying that he did not intend to shoot the victim, but only scare him.[121] When the victim brought a subsequent civil action against the insured, the court held that the earlier guilty plea was not conclusive evidence to establish the "expected or intended" exclusion in the insured's insurance policy precluded coverage.[122] The court held that a plea of guilty does not constitute a full and fair litigation of the issues.[123] Instead, it represents a defendant's option to forego litigation which usually has little to do with the nature of the issues themselves.[124] Further, it would be unfair for the victim of defendant's conduct to be precluded from seeking civil recovery because of defendant's decision to waive trial of the criminal charges.[125]

But in *Aid Ins. Co. (Mut.) v. Chrest*, the court held otherwise. The insured was in his home when he fired a rifle at a state trooper who had been called to the residence because of concerns the insured's family members had over his well-being.[126] The insured pled guilty to charges of assault with intent to commit murder.[127] The trooper then brought a civil action against the insured under theories of intentional tort and negligence.[128] The insurance company

[120] Garden State Fire & Casualty Co. v. Keefe, 172 N.J. Super. 53, 55-56 (App.Div. 1980).
[121] Id. at 56.
[122] Id. at 60.
[123] Id.
[124] Id.
[125] Id. at 61; *see also* Brohawn v. Transamerica Ins. Co., 276 Md. 396, 403 (Md. 1975) (Guilty plea to a criminal charge may be introduced in a subsequent civil proceeding as an admission but it does not conclusively establish liability and may be rebutted or explained in the civil case).
[126] Aid Ins. Co. (Mut.) v. Chrest, 336 N.W.2d 437, 438-439 (Iowa 1983).
[127] Id. at 439.
[128] Id.

argued that the insured plea of guilty was conclusive proof of intent on the part of the insured such that coverage was precluded under the "expected or intended" exclusion clause of the insured's policy.[129] The insured argued that his plea of guilty was motivated by a desire to avoid more serious charges and maintained his innocence in the matter.[130] The court held that the motivation behind his plea was immaterial and issue preclusion prevented him from asserting coverage.[131] However, the court went on to hold that since the trooper was not a party to the insured's guilty plea nor given the opportunity to participate in the proceeding, he lacked the full and fair opportunity to litigate the insured's intent. [132] Therefore, unlike the insured, the trooper was not precluded from arguing coverage under the insured's policy and was permitted to make such arguments.[133]

D. Criminal Acts Exclusion

Another clause commonly at the disposal of the insurer in gun incidents is the "criminal acts" exclusion clause. The standard ISO Commercial General Liability insurance policy has the following language: "The insurance does not apply to...d. "Personal...injury arising out of a criminal act committed by or at the direction of the insured." Unlike the "expected or intended" language, the criminal acts exclusion generally does not require an inquiry into the intent or expectation of the insured. [134] Thus, the criminal acts exclusion serves as a method for quickly disposing of claims involving criminal acts of the insured.[135]

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[129] Id.
[130] Id.
[131] Id. at 440.
[132] Id.
[133] Id. at 440-441; *but see* State Mut. Ins. Co. v. Bragg, 589 A.2d 35, 36 (Me. 1991) (Court held that insured's unilateral act of pleading guilty to murder and attempted murder precluded Plaintiff in civil suit from arguing the insured did not act intentionally).
[134] Daniel C. Eidsmoe & Pamela K. Edwards, *Home Liability Coverage: Does the Criminal Acts Exclusion Work Where the "Expected or Intended" Exclusion Failed?*, 5 Conn. Ins. L.J. 707, 720 (1999).
[135] Id.

Most courts have ruled that the criminal acts exclusions are not limited to intentional harmful criminal conduct. [136] In *Allstate v. Peasley*, following a shooting, the insured pled guilty to reckless endangerment.[137] The shooting victim filed a civil suit against the insured and the insurer argued it was not obligated to indemnify the insured under the policy which excluded, "any bodily injury . . . which may reasonably be expected to result from the intentional or criminal acts of an insured person.[138] The insured argued that the exclusion did not apply to unintentional criminal acts.[139] The court held that the criminal acts exclusion meant an act for which a criminal conviction may result, and thus, held the exclusion applied in the case of a charge for reckless endangerment.[140]

A number of courts have also held that the exclusion applies to minors, even if they could not be criminally prosecuted as adults.[141] In *Allstate Ins. Co. v. Burrough*, the insured, who was 14 years old, stole a gun from his grandfather and eventually gave to his friend, who was also a minor.[142] While the friend was holding the gun, it accidentally fired and injured another boy.[143] In the subsequent civil suit, the insurer argued that it was not obligated to provide coverage based on an exclusion in the policy for "bodily injury . . . which may reasonably be expected to result from the intentional or criminal acts or omissions of, any insured person."[144] At the time of incident, the insured could not be charged with any crime for furnishing the gun to a minor because he was a juvenile.[145] The court held that it made no difference that the insured could not be criminally convicted or adjudged a juvenile delinquent, but only that the act he committed

[136] Michael F. Aylward, *Does Crime Pay? Insurance for Criminal Acts*, 65 Def. Couns. J. 185 (1998).
[137] Allstate v. Peasley, 80 Wn. App. 565, 566, 566 (Wash. Ct. App. 1996).
[138] Id. at 566-567.
[139] Id. at 566.
[140] Id. at 567-568.
[141] Aylward, *supra* note 136.
[142] Allstate Ins. Co. v. Burrough, 120 F.3d 834, 836 (8th Cir. Ark. 1997).
[143] Id.
[144] Id. at 837.
[145] Id. at 839.

was criminal.[146] Thus, because the state criminal code defined the furnishing of a firearm to a minor a criminal act, the exclusion applied. [147]

Overall, the track record of the criminal acts exclusion clause is extremely favorable to insurer.[148] However, extra care should be taking in drafting such clauses to make clear the intention of the insurer to exclude any and all morally reprehensible acts from coverage.[149]

E. Duty to Defend

While the interpretation of policy exclusions deals primarily with the insurer's duty to indemnify the insured, another issue has arisen with regard to the insurer's duty to defend the insured. An insurer's duty to defend is broader than its duty to indemnify and arises when there is a possibility the claim may fall within the insurance policy.[150] The duty to defend arises not only from pleadings, but also from facts reasonably ascertainable from the insurer's own independent investigation.[151] State courts have reached different opinions as to how far an insurer's duty to defend will reach.

In cases of self-defense, there is a split of authority as to whether or not an insurer has a duty to defend under a policy with an intentional acts exclusion. A majority of jurisdictions hold that an insurer does owe a duty to defend in such situations. For example, in *Preferred Mut. Ins. Co. v. Thompson*, the insured was attacked outside of his house, and acting in self-defense, shot

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[146] Id.

[147] Id; *however, see* Allstate Ins. Co. v. Lewis, 732 F. Supp. 1112 (D. Colo. 1990) (The insured, a minor, accidentally shot another minor. He was charged with first degree assault in a juvenile delinquency proceeding. The court held that a juvenile delinquency proceeding is not a criminal conviction, but a civil proceeding, a thus the criminal acts exclusion did not apply).

[148] Aylward, supra note 136 at 198.

[149] Id.; *see* Safeco Ins. Co. of Am. v. Robert S., 26 Cal. 4th 758, 763-64, 28 P.3d 889, 893 (2001) (the insurer chose not to have a criminal act exclusion, instead opting for an illegal act exclusion. The court held that it would not read into the policy what the insurer had omitted because it would violate the fundamental principle of interpreting contracts. The court went on to hold the "illegal act" exclusion was ambiguous and would not be given affect).

[150] Watkins v. S. Farm Bureau Cas. Ins. Co., 2009 Ark. App. 693, 7 (Ark. Ct. App. 2009).

[151] State Farm Fire & Casualty Co. v. Poomaihealani, 667 F. Supp. 705, 709 (D. Haw. 1987).

an injured the attacker.[152] The attacker brought a civil suit against the insured, bringing claims of negligence and intentional tort.[153] The insured's policy had an exclusion from coverage for "expected or intended" injuries.[154] The court first held that if the insurer was obligated to defend the insured under the claim of negligence which was covered under the insured's policy, then it was also obligated to defend the insured an any other claim which arose out of the same occurrence.[155] The court went on to hold that if the insured intentionally injured a third party, but the surrounding circumstances indicated he acted in self-defense, the insurer may not refuse to defend the insured based on the "expected or intended" exclusion under the policy.[156] The court reasoned that no purpose is achieved by denying coverage to an insured who acts in self-defense because the insured acts in reaction to the attacker and does not commit misconduct. [157]

In *Michigan Millers Mut. Ins. Co. v. Christopher*, the insured was awoken by his wife who stated that there was an intruder in their home.[158] The insured grabbed his gun and chased after the intruder.[159] An altercation and struggle ensued between the intruder and the insured, resulting in the insured shooting and killing the intruder.[160] The intruder's estate brought suit against the insured claiming that his "negligent or culpable conduct" was a substantial factor in

[152] Preferred Mut. Ins. Co. v. Thompson, 23 Ohio St. 3d 78, 79 (Ohio 1986).
[153] Id.
[154] Id. at 80.
[155] Id. The court reasoned that the additional cost of defending the insured against an intentional tort claim would be minimal because if the insured claims of self-defense fail, the insurer will not be obligated to pay under the policy because the "expected or intended" exclusion would properly preclude indemnification.; In a concurring opinion, Judge C.J. Celebrezze cautioned that although the insurance company has a duty to defend in these matters, there is an undeniable conflict between the insurer and the insured. While the insured will desire to show his conduct was negligent to fall within his insurance coverage, the insurer will desire to show his conduct was intentional to exclude coverage. Thus, Judge Celebrezze suggested that the insurer should not be permitted to select counsel for the insured under these circumstances.
[156] Id. at 691.
[157] Id.
[158] Michigan Millers Mut. Ins. Co. v. Christopher, 66 A.D.2d 148, 150 (N.Y. App. Div. 4th Dep't 1979).
[159] Id.
[160] Id.

causing the death of the intruder.[161] The insured's policy had an exclusion for expected or intended bodily injury.[162] In finding that the exclusion did not apply in this matter, the court stated that the insurer's duty to defend is broader than its duty to pay.[163] Further, when an insurer undertakes an obligation to defend, that obligation extends to any action, even if the allegations are groundless, false or fraudulent.[164] In order to relieve itself from its duty to defend, the insurer was obligated to demonstrate that the allegations in the complaint were entirely within the exclusion and were not subject to any other interpretation.[165] The Court held that since the allegations were open to two interpretations, either the insured intentionally shot the intruder or that he accidentally did so, the insurer owed a duty to defend the insured. [166]

In contrast, in *Allstate Ins. Co. v. Cannon*, following a street fight, the insured gave a gun to his friend, knowing it was loaded and knowing his friend was angry.[167] The friend returned to the scene of the street fight, without the insured, and fired the gun, killing one man and injuring another.[168] The friend claimed that he was acting in self-defense when he fired the shot that killed the man.[169] A suit was brought against the insured seeking indemnification from his homeowner's insurance policy.[170] The policy included an exclusion to coverage for "expected or intended" injury.[171] The court acknowledged that a duty to defend was separate and distinct from

[161] Id.
[162] Id. at 151.
[163] Id.
[164] Id. at 151-152.
[165] Id.at 152.
[166] Id. The court also held that the insured's admission to the insurer that he acted intentionally did not relieve the insurer of its duty to defend because the suit brought by the intruder's estate alleged unintentional tort of negligence and not the intentional tort of battery; *see also* Allstate Indem. Co. v. Lewis, 985 F. Supp. 1341, 1345 (M.D. Ala. 1997) (A duty to defend in a suit is determined by the language of the policy and the allegations in the complaint. If the allegations in the complaint show and accident or occurrence which comes within coverage, the insurer is obligated to defend regardless of the ultimate liability of the insured).
[167] Allstate Ins. Co. v. Cannon, 644 F. Supp. 31, 32 (E.D. Mich. 1986).
[168] Id.
[169] Id.
[170] Id.
[171] Id.

a duty to provide coverage.[172] However, the court ultimately ruled that the fact the friend may have been acting in self-defense or to protect others did not affect the policy's exclusion against intentional acts because the firing of the gun was not "accidental."[173] Therefore, the insurer did not have any duty to defend the insured in this matter.[174]

F. Conclusion

As seen above, the interpretation and application of an insurance policy in incidents involving the use of a gun can create a headache for all involved. The best practice is to be aware of how a particular jurisdiction has interpreted the policy language in specific situations and draft the policy to best effectuate the intentions of the insurer and the insured.

III. Mandatory Insurance

On December 14, 2012, Adam Lanza opened fire inside Sandy Hook Elementary school in Newtown, Connecticut, killing 26 people.[175] The incident was the second deadliest school shooting in United States history.[176] It followed a recent trend of deadly mass shootings in America, including a 2012 shooting inside an Aurora, Colorado movie theatre which killed 12 people and a 2011 shooting in Tucson, Arizona which left 6 people dead.[177]

In the wake of these shootings, lawmakers in both state and federal government are trying to identify new ways to curb gun-related violence. Banning the use of assault rifles, banning multiple-ammo clips and requiring more stringent background checks are just some of the

[172] Id. at 34.
[173] Id.
[174] Id.
[175] Susan Candiotti, Greg Botelho and Tom Watkins, Newtown Shooting Revealed in Newly Released Documents, CNN.COM, (March 29, 2013), http://www.cnn.com/2013/03/28/us/connecticut-shooting-documents.
[176] Cite
[177] *Newtown, Conn. Shootings: Timeline of Mass Killings Since Columbine*, NEWSMAX.COM, (Dec. 14, 2012), http://www.newsmax.com/us/mass-shootings-us-colorado/2012/07/20/id/445971.