

## **Fifth Circuit: Driving in Violation of Criminal Plea Is Not an "Occurrence" Under Texas Law**

### *Insurance Law Update*

March 2012 by [Marcos Cancio](#)

In *Wilkinson v. State Farm Lloyds*, 2012 WL 89957 (5th Cir. (Tex.) Jan. 12, 2012), the U.S. Court of Appeals for the Fifth Circuit found that driving past the house of a sexual molestation victim in violation of a criminal plea was not an "occurrence" under a homeowners' policy. A Texas state court jury had found a homeowner negligent for sexually molesting a woman and awarded damages. The homeowner made a claim for coverage under his homeowner's insurance policy and assigned the rights to collect under the policy to the victim. The victim, as assignee, sued State Farm Lloyds alleging that it failed to indemnify her and sought to use the negligence judgment as offensive collateral estoppel.

The federal district court granted summary judgment in favor of State Farm. The court held that sexual molestation could not be covered under the insurance policy because it was an intentional act. Furthermore, the homeowner's violation of his criminal plea--driving on the victim's street--was also intentional. Additionally, it did not cause "bodily injury," only "psychoemotional injury." The policy at issue defined "occurrence" as an "accident, including exposure to conditions, which results in bodily injury or property damage during the policy period." The assignee appealed the decision of no coverage for the "street driving."

The Court of Appeals affirmed that there was no coverage under the policy. The court recognized that under Texas law, the duty to indemnify is determined from the actual underlying facts that result in liability to the insured. The court found that the term "accident" was generally understood to be a fortuitous, unexpected and unintended event that took place as a "culmination of forces working without design, coordination or plan." The court reasoned that a molester driving on the street past his victim's house was not therefore an "accident" or an "occurrence" because the molester deliberately chose to be present in a place where he had agreed not to be. The court found that

harm to the victim was the "natural and expected result" and was "highly probable whether the insured was negligent or not."

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