2022 Focus December Conference
December 1, 2022
New York, New York

HOLIDAY CHEERS OR TEARS: COVERAGE AND CASUALTY ISSUES BROUGHT ON BY HOLIDAY HIJINKS

I. INTRODUCTION

A. INTRODUCTION OF PROGRAM – TOPIC

B. INTRODUCTION OF PANELIST

1. JANNEA ROGERS MODERATOR
2. REBECCA APPELBAUM – PANELIST
3. EILEEN JENKINS PANELIST
4. SCOTT REMBOLD – PANELIST
5. CHERYL SOARES – PANELIST

C. DISCLAIMER – ALL DISCUSSIONS ARE THE THOUGHTS AND MENTAL IMPRESSIONS OF THE PANELIST ALONE AND NO PANELIST IS PROVIDING EITHER LEGAL ADVICE NOR A POSITION ON A TOPIC OF THEIR RESPECTIVE ORGANIZATION.

D. HOUSEKEEPING – PHONES OFF, CLE FORMS AND SCANNING INTO PROGRAM

II. ISSUES RELATED TO NEW YEAR CELEBRATIONS - STARTING OFF THE NEW YEAR WITH A BANK

A. Coverage

1. *Thornton v. Paul*, 85 Ill. App. 3d 121, 123, 405 N.E.2d 1341, 1343 (1980), aff'd in part, rev'd in part sub nom. *Thornton v. Illinois Founders Ins. Co.*, 84 Ill. 2d 365, 418 N.E.2d 744 (1981)
    - "The scenario arises from the traditional display of merriment associated with ringing out the old and ringing in the new on New Year's Eve and the early morning hours of New Year's Day. According to our plaintiff here, his enjoyment of the festivities surrounding the coming of 1973 was abruptly ended when he was struck by a wooden object wielded by Ben Paul, the proprietor of a spirit dispensary known as Ben's Den, Inc."
    - Tavern patron appealed from order of the Circuit Court, McLean County, William T. Caisley, J. P., finding that tavern owner's act of striking patron was a battery, and thus, that battery exclusion clause in policy of tavern's liability insurer was applicable. The Appellate Court, Mills, P. J., held that: (1) trial court erred in striking evidence of justification and self-defense presented to rebut the prima facie defense of insurer that the owner's conviction of battery exempted insurer from coverage; (2) insurer was not precluded from asserting

defense that event was not an "occurrence" under the policy; (3) definition of "occurrence" as "accident" in policy was ambiguous in that it was not clear whether term "accident" excluded all intentional acts from coverage; and (4) a jury question existed as to whether owner's use of force was either justified or in self-defense.

- Reversed and remanded.

2. *Century Mut. Ins. Co. v. Paddock*, 168 Mich. App. 747, 425 N.W.2d 214 (1988)
    - "The complaint arose from a fight at the Avalon Bar in Hillman, Michigan, on the night of New Year's Eve, 1982."
    - "The Paddocks' kicking was not an 'undesigned contingency,' and so falls outside the policy coverage provisions."
    - Homeowner's insurer brought action for declaratory judgment that policy did not cover actions by insured and his son who kicked victims outside of bar. The Circuit Court, Eaton County, Hudson E. Deming, J., entered judgment in favor of insurer. Insured and his son appealed, and victims filed cross appeal. The Court of Appeals, Stempien, J., held that kicking by insured and his son who injured victims after they had fallen was not covered under policy.
    - Affirmed.
3. *Allstate Ins. Co. v. Nw. Nat. Ins. Co. of Milwaukee, Wis.*, 581 S.W.2d 596, 601 (Mo. Ct. App. 1979)
    - "In fact, it was while he was using it for personal pleasure on New Year's Eve 'with no restrictions' that the accident in question occurred."
    - Action was brought to determine if 17-year-old son, who was driving, with parental consent, 1965 car, allegedly owned by used car dealer, when it collided with car occupied by three sisters, was covered under nonowned automobile coverage in policy issued to father on 1971 car, or under policy issued to dealer, or under uninsured motorist coverage on car occupied by injured sisters. The Circuit Court, Jasper County, Ben F. Pyle, J., found that father's insurer alone had liability coverage, and all parties, save dealer's insurer and son, appealed. The Court of Appeals, Titus, J., held that: (1) son was not included as relative insured under nonowned automobile coverage in policy issued to father, where coverage given a relative was restricted to a private passenger automobile not regularly furnished for use of such relative, but, under circumstances, 1965 car was regularly furnished for son's use; (2) son was not covered under policy issued to dealer, because, under circumstances, dealer never had legal title to and never did own the 1965 car, and (3) trial court erred in rendering its supplemental decree which declared that insurer's policy afforded uninsured motorist coverage to injured sisters, where, under circumstances, such was beyond scope of, and unsupported by, pleadings.
    - Affirmed in part, reversed in part and remanded with directions.

B. Liability

1. *Plunkett v. Nall*, 374 S.W.3d 584 (Tex. App. 2012), review granted, judgment rev'd, 404 S.W.3d 552 (Tex. 2013)

- Guest brought negligence action against social hosts for injuries sustained at a New Year's Eve party.
- Plaintiff went to NYE party and Defendant's home. Defendant required guests spend the night but did nothing to enforce the rule. When an inebriated guest got into their car to leave, Plaintiff attempted to dissuade the guest. The guest drove off, causing serious brain damage to Plaintiff. Plaintiff sued Defendant-hosts.
- Summary judgment in favor of hosts was appealed and reversed.

2. *Kramer v. Cont'l Cas. Co.*, 641 So. 2d 557, 559–60 (La. Ct. App.), as amended on reh'g (Sept. 2, 1994), writ not considered, 94-2576 (La. 12/19/94), 648 So. 2d 399, and writ denied, 94-2473 (La. 12/19/94), 648 So. 2d 402, and writ denied, 94-2474 (La. 12/19/94), 648 So. 2d 403, and writ denied, 94-2475 (La. 12/19/94), 648 So. 2d 403
    - "The automobile accident at issue occurred on New Year's Eve of 1987 in Lake Charles, Louisiana after a group of teenagers were told to leave the Downtowner Motel where they had gathered for a party in a private room. Shortly after leaving the Downtowner, 16 year old Shannon Kramer was severely injured while riding as a passenger in an *560 automobile driven by 17 year old John Carrico."
    - Parents, individually and on behalf of their minor daughter, brought suit against various defendants, seeking damages for injuries sustained by minor in automobile accident. The Fourteenth Judicial District Court in and for the Parish of Calcasieu, Charley Quienalty, J., found motel and off-duty officers hired as security guards free from fault. Plaintiffs appealed and defendants answered appeal. The Court of Appeal, Knoll, J., held that: (1) off-duty officers were employees, rather than independent contractors; (2) jury was manifestly erroneous in its determination that motel was not negligent; (3) motel was 35 percent at fault; (4) jury awards for impairment of earning capacity, future medical expenses and general damages were abusively low and were properly raised by trial judge; and, on rehearing, the Court further held that: (5) defendants and their insurers were solitarily liable.
    - Affirmed in part, reversed in part and rendered

III. ISSUES RELATED TO VALENTINE'S DAY – HOW TO AVOID THE MASSACRE

A. Coverage

1. *Sambola v. Dwyer*, 96-0259 (La. App. 4 Cir. 8/21/96), 684 So. 2d 957
    - Dog that was a Valentine's Day gift bit child. Parents of child who was severely injured by dog bite brought suit against dog owner, who had moved out of his house and into his mother's house. Parents sought declaratory judgment that dog owner was covered under his mother's homeowners' insurance policy. The 34th Judicial District Court, St. Bernard Parish, No. 72-375, Melvyn J. Perez, J., held that dog owner was resident of his mother's household on day of the accident, and insurer appealed. The Court of Appeal, Landrieu, J., held that dog owner was resident of his mother's household.
2. *Postell v. Am. Fam. Mut. Ins. Co.*, 823 N.W.2d 35 (Iowa 2012)

- Coinsured intentionally set fire to house on Valentine's Day.
- Insured brought action against insurer seeking payment under homeowners' insurance policy for damage caused by house fire that was started by coinsured in a suicide attempt. The District Court, Scott County, John D. Telleen, J., found in favor of insurer. Insured appealed.

B. **Liability**

1. *Margaret W. v. Kelley R*., 139 Cal. App. 4th 141, 42 Cal. Rptr. 3d 519 (2006)
    - After she allegedly endured a brutal sexual assault when she was 15 years old and she left a sleepover at her girlfriend's house with boys in a drunken state, plaintiff brought a negligence action against the mother who had hosted the sleepover. The Superior Court, Sonoma County, No. SCV–229662, Robert S. Boyd, J., entered summary judgment in favor of defendant. Plaintiff appealed. Court of Appeals affirmed.
2. *Schlegel v. Knoll*, 427 S.W.2d 480, 481 (Mo. 1968)
    - "President Johnson was visiting in St. Louis on that Valentine's day, February 14, 1964, and incident to that visit intensive security precautions were taken by the police department. Plaintiff's first assignment of duty was to direct traffic along the President's route at 18th and Market streets and ten minutes after the President passed that point plaintiff's orders required him to go to Kingshighway and Lindell to help direct traffic."
    - Action for injuries sustained by plaintiff police officer while driving three-wheeled motorcycle in westerly direction on eastbound lane when he struck automobile of defendant who intended to make left turn into parking lot and who pulled out in front of plaintiff without signaling. The Circuit Court, St. Louis City, Michael F. Godfrey, J., entered judgment against plaintiff and he appealed. The Supreme Court, Pritchard, C., held that instruction alternately submitting that plaintiff failed to operate his vehicle a safe distance to left of westbound traffic in driving two or three feet from center line was prejudicially erroneous in that it imposed upon him a higher duty than that required by law.
    - Reversed and remanded for new trial.
3. *Mixon v. Pac. Gas & Elec. Co*., 207 Cal. App. 4th 124, 129, 142 Cal. Rptr. 3d 633, 637 (2012)
    - "On the evening of February 14, 2006, a father and his three children were walking across a street in a marked crosswalk when a motorist failed to yield to the pedestrians and struck one of the children. The father, Jeremy Mills, had taken his eight-year-old daughter Gabrielle Mills and four-year-old twin sons Tyler and Adam Mixon to a Valentine's Day dinner."
    - Injured boy and his siblings brought action against motorist, State, utility, and others after car struck and injured boy while he was walking with his family in a marked crosswalk during the evening. The Superior Court, Humboldt County, No. DR070109, W. Bruce Watson, J., granted summary judgment to State and utility, and plaintiffs appealed.

IV. ISSUES RELATED TO MARDI GRAS – LET THE GOOD TIMES ROLL

A. Coverage

1. *Alombro v. Salman*, 536 So. 2d 764, 765 (La. Ct. App. 1988)
    - "Lloyd P. Alombro, Jr., filed suit against Samir Salman, alleging that on February 15, 1983, as he was watching a Mardi Gras parade in Metairie, Louisiana, "suddenly and without provocation" defendant attacked him and beat him about the head and face."
    - In personal injury action arising out of fistfight between plaintiff and insurer, insured's motion for summary judgment seeking to compel liability insurer to provide defense was granted by the Twenty-Fourth Judicial District Court, Parish of Jefferson, Alvin Rudy Eason, J., and insurer appealed. The Court of Appeal, Chehardy, C.J., held that allegations in petition alleging that insured under homeowners policy attacked plaintiff without provocation and beat plaintiff about head and face and that plaintiff suffered injuries as result of unlawful and vicious act did not in themselves establish that insured either consciously desired physical result of act or that he knew that result was substantially certain to follow, and thus, exclusion of "intentional injuries" did not prevent insurer from having obligation to defend insured.
    - Affirmed.
2. *Perkins v. Hartford Ins. Grp.*, 932 F.2d 1392 (11th Cir. 1991)
    - "This case stems from a dispute which arose between Perkins and Deena Watson, one of his former customers. Ms. Watson, an artist, hired Perkins in January of 1988 to make prints of an original Mardi Gras poster which Watson had designed and painted for sale in the Mobile, Alabama area."
    - Insured brought action against liability insurer, claiming bad faith and breach of contract in refusing to defend insured in earlier litigation. The United States District Court for the Southern District of Alabama, No. 89–0055–B, Charles R. Butler, Jr., J., entered summary judgment in favor of insurer on bad faith claim and denied insured's motion for summary judgment on contract claim, and insured appealed. The Court of Appeals, Garza, Senior Circuit Judge, sitting by designation, held that: (1) under Alabama law, insurer was required to investigate incident underlying action against insured or to defend action and reserve right to contest coverage later, and (2) under Alabama law, liability insurer's failure to investigate incident underlying claim against insurer raised genuine issue of material fact as to whether insurer acted in bad faith, precluding summary judgment on insured's bad faith failure to defend claim.
    - Reversed and remanded.
3. *City of Kenner v. Certain Underwriters at Lloyd's & Krewe of Argus, Inc.*, 15-351 (La. App. 5 Cir. 12/30/15), 183 So. 3d 812
    - Case stems from underlying action involving injuries at a Mardi Gras ball.

- City brought action against licensee of city property and licensee's liability insurer for declaratory judgment that insurer owed duty to defend city as additional insured in suit to recover for personal injuries sustained on city property. The Twenty–Fourth Judicial District Court, Parish of Jefferson, No. 744–386, Division "N", Stephen D. Enright, Jr., J., entered summary judgment in favor of city. Insurer and licensee appealed.
- Holding: The Court of Appeal, Marc E. Johnson, J., held that interpreting indemnification provision of Use License Agreement was not necessary in order to determine whether insurer owed duty to defend city.
- Affirmed.

B. **Liability**

1. *Eldridge v. Downtowner Hotel*, 492 So. 2d 64, 64 (La. Ct. App. 1986)
    - "The record reflects that on February 7, 1978, Mardi Gras day, plaintiff was the guest of a patron of the Downtowner in the French Quarter. While on the second floor balcony of the hotel, he observed various individuals on other balconies toying with the crowds below by exposing their breasts or 'mooning' the crowds by exposing their bare buttocks. Spurred on by the wild atmosphere in the Quarter, plaintiff climbed on the balcony railing and mooned the crowd. While on the railing plaintiff fell to the street below and was seriously injured."
    - Guest of hotel patron who was injured when he fell from second-floor balcony of hotel while on railing brought negligence action against hotel and its insurer. The Civil District Court for the Parish of Orleans, Robert A. Katz, J., entered judgment on jury verdict in favor of hotel and insurer, and guest appealed. The Court of Appeal, Armstrong, J., held that hotel had no duty to protect against risk of harm of falling while on railing on second-floor balcony.
    - Affirmed.
2. *Daniels v. Essex Ins. Co*., 04-579 (La. App. 5 Cir. 11/30/04), 890 So. 2d 599
    - "On February 20, 1998, Tanya Lee Daniels had attended a Mardi Gras Parade in Metairie, Louisiana. She then went to Rusty's Pool Tavern, owned by Gregory Miller, in LaPlace, Louisiana. She had consumed approximately 5–6 beers at the parade and a shot of tequila at the bar. Daniels testified at trial that she had gone to Rusty's Tavern to shoot pool with her roommates. She and a friend then sat down at a table, which was close to where Christopher Pitre sat. Shortly before, Pitre's friend, Ricky and another customer, Jimmy Reed, had been involved in a disturbance."
    - Bar patron brought negligence action other bar patron and bar owner, to recover damages for injuries to her jaw and forehead that she suffered as result of fight between herself and other patron. The Judicial District Court, Parish of St. John the Baptist, No. 39848, Division "A," Madeline Jasmine, J., found in favor of plaintiff
3. *Butler v. AAA Warehousing & Moving Co.*, 686 So. 2d 291 (Ala. Civ. App. 1996)

- "Butler is a member of the Bienville Club, which is located in Mobile, Alabama. Every year since 1967, the Bienville Club has provided a reviewing stand for its members to stand on for the purpose of viewing the Mardi Gras parades. And, every year since 1968, AAA has erected, disassembled, and stored the reviewing stand for the Bienville Club. The reviewing stand is comprised of an iron framework that is covered with plywood flooring. The stand is approximately 80 feet long. There are four levels. Each level is approximately 5 feet wide. Between each level there is a 5–inch vertical space, which separates one level from the next level. On February 19, 1993, Butler, while watching a parade from the lowest level of the reviewing stand, sustained multiple injuries to her foot and ankle when the man standing next to her 'pushed' or 'bumped' her, causing her foot to get caught between one of the vertical spaces."
- Club member brought personal injury action against company that erected club's parade reviewing stand, claiming that company was negligent in failing to recognize hazard of open space between levels of stand, in failing to advise club representatives of such hazard, and in failing to take steps to correct hazard. The Mobile Circuit Court, Chris N. Galanos, J., entered summary judgment for company, and member appealed. The Court of Civil Appeals, Richard L. Holmes, Retired Appellate Judge, held that reviewing stand, as erected, was not defective or unreasonably dangerous.
- Affirmed.

4. *Barnhart v. Paisano Publications, LLC*, 457 F. Supp. 2d 590 (D. Md. 2006)
    - Plaintiff voluntary lifted her shirt at a Mardi Gras party. A photo was taken and later published. Plaintiff brought action against publisher for invasion of privacy. Publisher moved for summary judgment.
    - Court held that: plaintiff's lifting up of her shirt at fund-raising event could not reasonably be said to have constituted private act; photograph of event did not constitute false light invasion of privacy; and publication of photograph did not constitute invasion of privacy by appropriation of plaintiff's likeness.

V. **ISSUES RELATED TO ST. PATRICK'S DAY FESTIVITIES – LOOKING FOR THE GOLD AT THE END OF THE RAINBOW**

A. **Coverage**

1. *Penn-Am. Ins. Co. v. Peccadillos, Inc.*, 2011 PA Super 176, 27 A.3d 259, 262 (2011)
    - "Latta and Maisner determined to 'celebrate' St. Patrick's Day by visiting a series of bars where both of them drank excessive amounts of alcohol, causing them to be significantly and visibly intoxicated."
    - General commercial liability insurer filed action for complaint in declaratory judgment, asserting that it had no duty to defend insured, a bar owner, in underlying negligence action against insured arising from a fatal car crash caused by two patrons that insured had ejected from its premises in a dangerously inebriated condition. Insured filed motion for summary judgment. The Court of Common Pleas, Erie County, Civil Division, No. 12571–08, Dunlavey, J., entered summary judgment,

finding that liquor liability exclusion in policy did not preclude coverage under the policy and negate insurer's duty to defend. Insurer appealed.

- Affirmed.

2. *Mangum v. Weigel*, 393 So. 2d 871 (La. Ct. App. 1981)
    - "Plaintiff was in a very minor collision involving his van and another vehicle in the French Quarter of New Orleans during a St. Patrick's Day parade. The other driver, shouting obscenities at plaintiff, got out of his own vehicle, came to plaintiff's van, and repeatedly punched plaintiff in the face through the open window. He then opened the door and attempted to pull plaintiff out of the van, while continuing to punch and strike plaintiff in the face, causing severe injuries. The other driver was either uninsured or under insured. He and plaintiff's insurer are defendants in this suit for personal injuries."
    - Van driver sued his automobile insurer and driver of vehicle with which van collided to recover for personal injuries sustained when he was struck by the other driver. The 24th Judicial District Court, Jefferson Parish, Division "A", Louis G. DeSonier, Jr., J., rendered summary judgment for insurer, and plaintiff appealed. The Court of Appeal, Samuel, J., held that where following collision between plaintiff's van and another vehicle the other driver exited his vehicle and repeatedly punched plaintiff in the face through open window of latter's van and then opened the door and attempted to pull plaintiff out of the van, while continuing to punch and strike plaintiff, causing severe injuries, such injuries were not "caused by accident" within meaning of medical payments provision of plaintiff's automobile policy and were not injuries "arising out of the ownership, maintenance or use of" the other driver's uninsured automobile within the meaning of uninsured motorist coverage.
3. Affirmed.

B. **Liability**

1. *Tauzier v. St. Patrick Parade Comm. of Jefferson, Inc.*, 01-1138 (La. App. 5 Cir. 1/29/02), 807 So. 2d 1106
    - Rider of float in St. Patrick's Day parade brought action against sponsor of parade, its insurer, and float owner for injuries sustained when audio speaker struck her head after it was knocked from its mooring atop float by overhanging tree branch. The Twenty-Fourth Judicial District Court, Parish of Jefferson, No. 535-664, Stephen J. Windhorst, J., granted defendants motion for summary judgment. Plaintiff appealed. The Court of Appeal, Susan M. Chehardy, J., held that: (1) sponsor was not guilty of gross negligence, and (2) judgment was null insofar as it concerned float owner, who had died.
    - Affirmed in part, vacated in part, and remanded.
2. *Delahoussaye v. Mary Mahoney's, Inc.*, 783 So. 2d 666, 669 (Miss. 2001)
    - "Martin's intoxication was caused exclusively from drinking beer that was purchased at Mary Mahoney's during the St . Patrick's Day celebration held at that establishment."

- Motorist sued restaurant, alleging it was responsible for injuries he sustained in a motor vehicle accident after restaurant illegally served alcoholic beverages to a minor. After the Supreme Court, 696 So.2d 689,reversed a grant of summary judgment for restaurant, the Circuit Court, Jackson County, James W. Backstrom, J., entered judgment on jury verdict for restaurant. Motorist appealed. The Supreme Court, Waller, J., held that restaurant could be liable in negligence for the sale of alcohol to a minor who shared that alcohol with another minor, who was then involved in accident.
- Reversed and remanded

3. *Ember v. B.F.D.*, Inc., 490 N.E.2d 764 (Ind. Ct. App. 1986), opinion modified on denial of reh'g, 521 N.E.2d 981 (Ind. Ct. App. 1988)
    - "Ember, an off-duty policeman himself, arrived at the Pub at approximately 8:00 p.m. He was a regular patron of the establishment, visiting the tavern on a weekly basis. On this particular evening, Ember had arranged to meet his wife and another couple at the Pub to celebrate St. Patrick's Day."
    - Bar patron injured in assault in parking lot across from a bar often used by patrons brought action alleging bar had breached duty owed to patrons. The Huntington Circuit Court, Dane Mann, J., entered summary judgment in favor of bar, and patron appealed. The Court of Appeals, Buchanan, C.J., held that: (1) issue of fact as to whether bar had gratuitously assumed duty to protect patrons and extent of that duty precluded summary judgment, and (2) business owner's duty of reasonable care may extend beyond the business premises.
    - Reversed and remanded.

VI. ISSUES RELATED TO MEMORIAL DAY – THINGS TO REMEMBER

A. Coverage

1. *Gen. Direct Mktg., Inc. v. Lexington Ins. Co.*, 410 F. Supp. 2d 387, 389 (M.D. Pa. 2006)
    - NAACP and twelve of its members alleged that the Yachtsman Resort Hotel instituted discriminatory policies and procedures during the Memorial Day weekend event known as "Black Bike Week."
    - Insured hotel proprietors brought suit against commercial general liability (CGL) insurer seeking damages for breach of contract and bad faith in refusing to defend underlying lawsuit alleging discrimination against black patrons under § 1981, Civil Rights Act of 1964, and South Carolina statute. Insurer moved to dismiss for failure to state claim.
    - Holdings: The District Court, Munley, J., held that: professional services endorsement provided coverage, and intentional discrimination exclusion did not apply to extent complaint sought to hold insureds vicariously liable for intentional discrimination by their agents.
2. *Stevenson v. Hamilton Mut. Ins. Co.*, 672 N.E.2d 467 (Ind. Ct. App. 1996)
    - "Over the 1994 Memorial Day weekend, Decedent's mother, Wyrtis Mitchell (now deceased) [Mother] and sister (Daughter's aunt), Annalou Freeman [Sister], visited Decedent's grave and discovered that the body

had been disinterred and was missing along with the monument which had marked the grave. It was later learned that Widow had caused the body to be disinterred and reburied elsewhere in the cemetery. The new grave had been marked with a used monument engraved with the name and dates of another person. This discovery caused Daughter, Mother, and Sister pain, anguish, and mental suffering."

- Insured mortuary and insured mortuary owner, together with underlying claimants, sued insureds' business owner's insurer, seeking liability coverage for compensatory and punitive damages awarded against insureds on the underlying claims, which involved disinterment of body and conversion of monument. The Brown Circuit Court, Heather M. Mollo, J., granted summary judgment to insurer, and plaintiffs appealed. The Court of Appeals, Robertson, J., held that: (1) the claims were not within scope of coverage provided under policy's mortician's malpractice endorsement, and (2) public policy precluded mortuary from obtaining coverage for vicariously imposed punitive damages, given level of owner's involvement in the liability-producing acts.
- Affirmed.

B. **Liability**

1. *Hendry v. Zelaya*, 841 So. 2d 572 (Fla. Dist. Ct. App. 2003)
    - On evening before Memorial Day, hotel bar patron, who was struck in head with beer bottle by second patron and suffered permanent brain damage, brought action for damages against hotel owner. In the Circuit Court, Dade County, Amy N. Dean, J., jury awarded patron $4.5 million. Owner appealed. The District Court of Appeal, Ramirez, J., held that risk of harm to patron was foreseeable.
2. *Shank v. H.C. Fields*, 373 Ill. App. 3d 290, 869 N.E.2d 261 (2007)
    - "On May 25, 2001, Champaign Asphalt was doing road-construction work on Interstate Highway 74, near exit 192, in Champaign County, Illinois. Champaign Asphalt's contract with the Illinois Department of Transportation (IDOT) incorporated IDOT's standard specifications, one of which was that all lanes of traffic shall be open on any legal holiday period, including the Friday before Memorial Day, beginning at 3 p.m. May 25, 2001, was the Friday before Memorial Day. A major multivehicle accident occurred on that date at approximately 3:35 p.m. Only one of the highway's right two lanes of traffic was open. The reason for the delay was that conveyor-type equipment being used to remove debris from the highway, an 'Athey loader,' unexpectedly broke down."
    - Automobile passenger, who allegedly was injured when semi-truck caused multi-vehicle accident in road-construction area in which lanes merged into one lane, brought action against road construction company for negligence and for breach of company's contract with Illinois Department of Transportation (IDOT) that incorporated specification that all lanes of traffic be open during legal-holiday periods. The Circuit Court, Champaign County, Michael Q. Jones, J.,

granted company's motion for summary judgment. Passenger appealed. Affirmed.

3. *Bell v. West*, 168 W. Va. 391, 284 S.E.2d 885 (1981)
    - Son borrowed father's truck over Memorial Day weekend.
    - Negligence action seeking damages for personal injuries received when plaintiff fell from back of pickup truck owned by insured and being driven by insured's son was brought against insured and his son. The Circuit Court, McDowell County, Jack Marinari, J., dismissed the action as to insured and entered default judgment as to son. Plaintiff appealed and insured's son cross-appealed. The Supreme Court of Appeals held that: (1) insured could not be held liable under family purpose doctrine for personal injuries caused by his son's negligent operation of vehicle where son had not lived in insured's household for several years, and (2) where allegation of violation of rule requiring giving notice of motion seeking default judgment was not raised in trial court, Supreme Court of Appeals would consider it waived on appeal.
    - Affirmed.

VII. ISSUES RELATED TO INDEPENDENCE DAY - THERE ARE FIREWORKS IN THE AIR

A. Coverage

1. *Amentler v. 69 Main St., LLC*, No. CIV. 08-0351FLW, 2009 WL 1905062 (D.N.J. June 30, 2009)
    - "On July 4, 2007, Third–Party Plaintiffs held a party at their home for the purpose of promoting and marketing the business of the Fox and Hound Tavern (the "Tavern") which they own with several others. Plaintiff Michael Perselay, the executive chef of the Tavern at that time, attended the party and brought his girlfriend, plaintiff Edena Amentler (collectively, "Plaintiffs"). Amentler alleges that she was sexually assaulted by the co-defendant, Jeffery Krol, while at the party."
    - Insurer had no duty to assume defense for a third-party plaintiff's claim against his employer under the dram shop act for failing to maintain a safe environment. The insurance policy contained liquor liability coverage but it excluded coverage to an employee of the insured who suffers bodily injury arising out of an in the course their employment by the insured or performing duties related to the conduct of the insured's business. The employee's alleged harm was "causally connected with" the scope of his employment, rather than proximately caused by his duties so the insurer had no duty to defend his claims
2. *Fed. Ins. Co. v. Great Am. Ins. Co.*, 893 F.3d 1098, 1101 (8th Cir. 2018)
    - "The incident giving rise to this case occurred on Independence Day, July 4, 2011. On that day, Yarco's employee, Aaron Sullivan, worked at the apartment complex's pool as a "pool monitor." In this role, Sullivan had a "responsibility to watch over the pool area and to take steps to keep a peaceful area around the pool." During his shift, Sullivan retrieved a handgun. To supposedly "celebrate" Independence Day, Sullivan proceeded to shoot the handgun an unknown number of times. He also allowed other individuals to shoot the handgun numerous times. Sullivan instructed those individuals to direct their shots "away

from the pool [and] in the general direction of [a] lake" bordering the apartment complex's property. This property, again, was located in a residential area of Kansas City. One of the bullets traveled across the lake and struck an eleven-year-old girl in the neck, shattering a cervical vertebra and damaging her spinal cord. The girl died the next day."

- Apartment management company's insurers brought action against apartment complex owner's insurer seeking declaratory judgment determining parties' obligations for settlement of wrongful death action and any priority of coverage. The United States District Court for the Eastern District of Missouri, Henry Edward Autrey, J., 2016 WL 5661623, entered summary judgment in plaintiffs' favor, and defendant appealed. Vacated and remanded.

B. Liability

1. *Facemire v. Konover Mgmt. S.*, 804 F. Supp. 1465 (S.D. Ala. 1992)
    - Visitor who was shot after fireworks display brought personal injury suit against organizers of display. The Resolution Trust Corporation (RTC), which was named as defendant, had action removed from the Circuit Court, Mobile County. On defense motions for summary judgment, the District Court, Howard, Chief Judge, held that: (1) any prior knowledge of criminal activity at center where organizers held municipally sanctioned fireworks display was not sufficient to impose duty on organizers under Alabama law to protect visitor; (2) genuine issue of fact existed as to whether organizers had actual knowledge that man with gun was at large in parking lot; but (3) RTC could not possess actual knowledge of criminal activity, since failed institution, and hence RTC as receiver, had divested itself of all interest and involvement in center on date in question.
2. *Shelanie v. Nat'l Fireworks Ass'n*, 487 S.W.2d 921 (Ky. 1972)
    - Action brought against fireworks association and others by 14-year-old boy, by and through his father and next friend, who individually was also a party, to recover for the injuries boy sustained when aerial bomb he found exploded. The Kenton Circuit Court, Robert O. Lukowsky, J., entered summary judgment in favor of defendants, and plaintiffs appealed. The Court of Appeals, F. Byrd Hogg, Special Commissioner, held that the boy, who had witnessed fireworks display on July 4th, and who, two days later, found what he admittedly suspected to be an aerial bomb, which exploded upon his attempting to burn the contents thereof, was contributorily negligent as a matter of law, and his negligence was a proximate cause of his injuries, since he exposed himself to a danger which an ordinary prudent child of like age, experience and intelligence would have recognized as creating an unreasonable risk of serious bodily injuries.
    - Judgment affirmed.
3. *Calkins v. Albi*, 163 Colo. 370, 374, 431 P.2d 17, 19 (1967)
    - "The following day was July 4th and during the morning Ralph while looking for something to do started searching for an airplane model. He got a chair, placed it in the closet of his mother's bedroom and while

perusing the contents of the shelf discovered the presence of the cherry bomb, which, however, he did not handle at this time. On the following morning, he again went to his mother's bedroom and on this occasion he removed the cherry bomb from the closet shelf. He took it to the front patio, tried to light the fuse, but found it wouldn't light. He then got his pocket knife out and carved a hole near the fuse to bring the fuse out, but it wouldn't come out. There were two pieces of punk on the patio, apparently left over from a fireworks display which the family had the evening before. Ralph took one of the punks, went to a gas stove in his home, lit the punk, returned to the patio, and inserted the punk into the hole he had carved in the cherry bomb. Nothing happened. He then lit the second punk and holding the cherry bomb in his right hand he inserted the lit punk into the hole he carved. The cherry bomb exploded causing the loss of the sight of his right eye."

VIII. ISSUES RELATED TO LABOR DAY – HOW TO WORK SMARTER NOT HARDER

A. Coverage

1. *Bldg. Specialties, Inc. v. State Farm Mut. Auto. Ins. Co.*, 440 So. 2d 984, 986 (La. Ct. App. 1983)
    - "The record reveals that Moxie Caesar (the son of John A. Caesar), Mark Fruge, and Mark Matthews rode in a 1980 Chevrolet Chevette to the Toledo Bend area near Many on the evening preceding Labor Day where they were joined by Joey Matthews, James H. Clark, and two girls. They stayed in two trailer homes at Toledo Bend and spent most of the night drinking beer. James H. Clark and Mark Fruge woke up before daylight on Labor Day to go dove hunting."
    - Personal injury and property damage actions arising from collision at intersection between automobile and motor home were consolidated. The 9th Judicial District Court, Parish of Rapides, Jules L. Davidson, Jr., J., entered judgment on jury verdict in favor of plaintiffs and rendered judgment on third-party demand in favor of third-party plaintiff, driver of automobile, and against third-party defendant, driver's insurer, awarding attorney fees and costs. Appeals were taken. The Court of Appeal, Knoll, J., held that: (1) jury did not clearly err in determining driver of automobile at time of accident; (2) jury was not clearly wrong in concluding that driver had express or implied permission of named insured to use automobile; and (3) insurer whose automobile liability policy issued to father of driver afforded coverage to driver owed driver duty to defend.
    - Affirmed.
2. *Lott v. State Farm Fire & Cas. Co.*, 541 N.W.2d 304, 305 (Minn. 1995)
    - "Carla C. Lott (Lott) commenced a state district court action in North Dakota against Scott Roesler (Roesler) as a result of injuries she sustained on September 1, 1990, when she was thrown from a dock into Tamarac Lake by Roesler during a Labor Day weekend party."
    - Assignee of rights under homeowners' policy brought action for declaratory judgment that policy provided liability coverage for named

insured's child for injuries at seasonal cabin. The District Court, Clay County, Kathleen Weir, J., entered summary judgment in favor of plaintiff. Insurer appealed. The Court of Appeals, Davies, J., 527 N.W.2d 164, held that policy provided liability coverage to named insured's child. Insurer appealed. The Supreme Court, Page, J., held that adult child was not resident of insured's household and, thus, not covered under insured's homeowners' insurance policy.

- Reversed.

B. **Liability**

1. Hallier v. Hopkins, 2016-Ohio-2661, ¶ 2, 2016 WL 1622066 (2016)
    - "M.H. participated in a Labor Day parade in Fremont, Ohio, by handing out candy to parade watchers. She retrieved the candy from a moving float sponsored by the local carpenter's union. She was injured during the parade when the float ran over her feet as she was attempting to retrieve candy."
    - Mother of parade participant brought negligence action against carpenters union and driver of vehicle pulling union's float in parade, alleging that participant was injured when float ran over participant's feet. The Court of Common Pleas, Sandusky County, granted summary judgment in favor of union and driver. Mother appealed. Affirmed.
2. Dziewiecki v. Bakula, 361 N.J. Super. 90, 824 A.2d 241 (App. Div. 2003), aff'd, 180 N.J. 528, 853 A.2d 234 (2004)
    - Labor Day social guest injured by diving into shallow end of above-ground swimming pool brought action against hosts for negligence, and against manufacturer and distributor for products liability and breach of warranty. The Superior Court, Law Division, Mercer County, granted summary judgment for manufacturer and distributor. Guest appealed. The Superior Court, Appellate Division, A.A. Rodriguez, J.A.D., held that ten-year construction statute of repose did not apply to manufacturer and distributor.
3. *McFall v. Compagnie Mar. Belge S.A.*, 304 N.Y. 314, 107 N.E.2d 463 (1952)
    - Charles McFall, a longshoreman was injured on Labor Day. He was employed by Transoceanic Terminal Corporation, brought suit against Compagnie Maritime Belge (Lloyd Royal) S. A., bareboat charter of vessel, and Atlantic Overseas Corporation, and Dow Chemical Company, manufacturer and shipper of carbon tetrachloride, and Bunge Corporation to recover for injuries sustained by plaintiff when overcome by carbon tetrachloride fumes from drums of carbon tetrachloride being loaded on vessel, and certain of the defendants brought third party actions seeking indemnity from Transoceanic Terminal Corporation and certain of the defendants. Appeals from a judgment in favor of plaintiff, entered March 29, 1951, on an order of the appellate Division of Supreme Court in First Judicial Department, 278 App.Div. 652, 102 N.Y.S.2d 1001, which modified, on the law and facts, a judgment of the Supreme Court in favor of plaintiff, entered in New York county on a verdict rendered at trial term, Aurelio, J. The modification consisted of reversing judgment in so far as it was in favor of Compagnie Maritime

Belge (Lloyd Royal) S. A. and Atlantic Over seas Corporation against the third party defendants Dow Chemical Company and Transoceanic Terminal Corporation and dismissing on merits third party complaints as to those defendants. Compagnie Maritime Belge (Lloyd Royal) S. A. appealed insofar as judgment affirmed judgment in plaintiff's favor against it in primary action and dismissal of its third party complaint against Bunge Corporation and insofar as it dismissed third party plaintiff complaints against Dow Chemical Company and Transoceanic Terminal Corporation. Dow Chemical Company appealed insofar as judgment affirmed judgment in favor of plaintiff against it in primary action and dismissed third party complaint against Transoceanic Terminal Corporation. Appeal of Compagnie Maritime Belge (Lloyd Royal) S. A. from that part of judgment dismissing third party complaint against Bunge Corporation was withdrawn by order of Court of Appeals dated June 30, 1951, by consent of parties. The Court of Appeals, Conway, J., held that evidence justified judgment for plaintiff against Compagnie Maritime Belge (Lloyd Royal) S. A. and Dow Chemical Company, and that Dow Chemical Company was not entitled to indemnity from Transoceanic Terminal Corporation, but that Compagnie Maritime Belge (Lloyd Royal) S. A. was entitled to indemnity from Dow Chemical Company and Transoceanic Terminal Corporation.

IX. ISSUES RELATED TO HALLOWEEN – DON'T LET YOUR CLAIMS SCARE YOU

A. Coverage

1. *Norfolk & Dedham Mut. Fire Ins. Co. v. Cumbaa*, 128 Ga. App. 196, 196 S.E.2d 167 (1973)
    - Insured was sued for injuries sustained by insured's guest at insured's Halloween party.
    - Insured under homeowner's personal liability policy brought suit to recover from insurer for insured's liability under judgment obtained against insured and for value of legal services, court expenses and penalty and attorney fees for insurer's refusal to defend the action. The Superior Court, Dougherty County, Asa D. Kelley, Jr., J., rendered judgment for insured, and insurer appealed. The Court of Appeals, Pannell, J., held that evidence was sufficient to support finding that insurer, the agent for which typed in name of insured in signature block and testified that almost 100 per cent of time notice is given orally by telephone and that agent never required signature of policyholder, had waived policy requirement of written notice of an occurrence.
    - Judgment affirmed with direction.
2. *Empire Fire & Marine Ins. Co. v. Jones*, 739 F. Supp. 2d 746 (M.D. Pa. 2010)
    - Insurer brought action against trash collection company and employee, seeking declaratory judgment as to its obligation to provide liability

coverage, under truckers' policy, for accident involving garbage truck. Parties cross-moved for summary judgment.

3. *Nautilus Ins. Co. v. Gardner,* No. CIV.A. 04-1858, 2005 WL 664358, at *1 (E.D. Pa. Mar. 21, 2005)
    - Plaintiff, Nautilus Insurance Company, filed a complaint on April 29, 2004 seeking a declaratory judgment establishing that it has no duty to defend defendant, William Gardner, individually and doing business as Doc Fright, Haunted Philadelphia and Festival of Fears(Halloween haunted house) (collectively "Gardner"), in connection with an action brought against Gardner by co-defendants, Samantha Brooks, a minor, and Harris Brooks and Susan Brooks, individually and as parents and natural guardians of Samantha Brooks (collectively "the Brooks"). Jurisdiction is based on diversity of citizenship. Before me now is plaintiff's motion for summary judgment and defendants' opposition thereto.
4. *Oliver v. Johnson*, 692 S.W.2d 855 (Tenn. Ct. App. 1985)
    - Insured sought recovery for his interest in log cabins which had been destroyed by fire on Halloween night. The Circuit Court, Blount County, John C. Crawford, J., entered judgment in favor of insured for full amount of policy and awarded a bad faith penalty, and insurer appealed. The Court of Appeals, Nearn, P.J. (W.S.), held that: (1) insured's interest in the cabins was sufficient to be insurable; (2) evidence preponderated against award based on full value of policy, the replacement value, requiring an award of actual cash value based on expert testimony; and (3) record did not support award of bad faith penalty.
5. *Federated Mut. Ins. Co. v. State Farm Mut. Auto. Ins. Co*., 282 Ill. App. 3d 716, 668 N.E.2d 627 (1996)
    - Insured wrecked car driving back from Halloween party. Car dealer's liability insurer sought declaratory judgment that it had no duty to defend driver of car borrowed by dealership employee. The Circuit Court, Du Page County, Bonnie M. Wheaton, J., entered summary judgment in favor of dealer's insurer despite its actual notice of lawsuit. Driver's automobile liability insurer appealed. The Appellate Court, Hutchinson, J., held that actual notice of lawsuit was sufficient to trigger duty to defend.
6. Reversed and remanded.

B. Liability

1. *Hanshew v. Martinez*, 2020 Ark. App. 119, 596 S.W.3d 53 (2020)
    - Parents of minor child, who was injured when her foot was run over by flatbed trailer hitched to truck for a hayride, filed negligence claim against hosts of Halloween party alleging hosts breached duty of care by failing to provide supervision for hayride, and seeking $1.5 million in damages and $97,581.41 for medical expenses. The Circuit Court, Benton County, Doug Schrantz, J., granted summary judgment in favor of party hosts. Parents appealed.

X. ISSUES RELATED TO THANKSGIVING – AVOIDING THE TURKEY CASE RESULT

A. Coverage

1. *Hawkeye-Sec. Ins. Co. v. Bunch*, 740 F. Supp. 2d 1072 (E.D. Mo. 2010), aff'd, 643 F.3d 646 (8th Cir. 2011)
    - Insured wrecked automobile in question during Thanksgiving holiday. Automobile insurer brought action seeking declaration that injured passengers were not covered under company's automobile insurance policy after they were involved in accident while vehicle assigned to them for upcoming business trip was driven by another employee.
    - Holdings: Following a bench trial, the District Court, E. Richard Webber, J., held that: driver did not have express permission to use vehicle, and permissive use exception to uninsured motorist (UM) coverage applied.
2. *Nationwide Mut. Ins. Co. v. Walters*, 142 N.C. App. 183, 541 S.E.2d 773 (2001)
    - Automobile insurer brought action against accident victims, driver, and his parents for a declaratory judgment that the parents' policies provided no liability coverage since the driver's friend furnished her vehicle for the driver's regular use. The Superior Court, Burke County, Richard D. Boner, J., entered summary judgment in favor of the insurer. Victims appealed. The Court of Appeals, Greene, J., held that: (1) the friend furnished the vehicle for the driver's regular use, and (2) the policies thus provided no liability coverage.

B. Liability

1. *Cooper v. Eberly*, 211 Kan. 657, 508 P.2d 943 (1973)
    - Action was brought against owner of recreational farm located adjacent to road for injuries sustained on Thanksgiving Day by driver and passenger of automobile which struck horse which had escaped from owner's premises and for damage to automobile. The Sedgwick District Court, Doyle E. White, assigned J., rendered judgment in favor of plaintiffs and the defendant appealed. The Supreme Court, Schroeder, J., held that where owner had been aware that gates on his premises had been left open in the past, that his horses had previously escaped and that trespassers were frequently on premises, owner's failure to padlock gate which was found open after accident and failure to post ‘no hunting or trespassing’ signs constituted negligence whether opening of gate by third party was innocent, negligent, intentionally tortious or criminal.
2. *White v. Frenkel*, 615 So. 2d 535 (La. Ct. App. 1993)
    - Driver was a wrestler who was traveling on Thanksgiving Day. Passenger who was injured in accident and family of motorist who was killed in accident brought actions against driver's employer and employer's general liability insurer based on driver's negligence. The 10th Judicial District Court, Parish of Natchitoches, John B. Whitaker, J., granted judgment for plaintiffs, and denied defendants' motion for new trial, and defendants appealed. The Court of Appeal, Saunders, J., held that: (1) driver was employee and was acting in the course and scope of his employment at the time of the accident; (2) finding that motorist was not comparatively negligent was supported by the evidence; and (3) damages were not excessive.

3. *Hinton v. Hoskins*, 411 F. Supp. 282 (W.D. Ky. 1976)
    - Driver was heading home for Thanksgiving holiday. Personal injury action arising out of automobile accident over the Thanksgiving holiday was brought against truck driver, owner of the truck, and lessee of the truck. Following determination of negligence on the part of the truck driver, the District Court, Bratcher, Chief Judge, held that since Kentucky was the site of the accident, Kentucky law would be applied, under Kentucky choice of law principles, to determine ultimate responsibility for liability; and that where truck driver was employed by owner, where truck driver had delivered the load which was the subject of the lease and was returning home at the time of the accident, and where truck driver had not contacted lessee's terminal after making delivery to determine if another load was available, as required by manifest, truck driver was on his own mission at the time of the accident and not within the scope of the lease, so that the owner of the truck was responsible for the negligence of the truck driver.

XI. ISSUES RELATED TO CHRISTMAS – HOW TO KEEP THE HO HO HO IN THE HOLIDAYS

A. Coverage

1. *Greenway v. Selected Risks Ins. Co.*,307 A.2d 753 (D.C. 1973)
    - Tavern owner was visited by husband of claimant on Christmas Day insisting that wife needed additional compensation for injuries sustained at tavern. Action by tavern owner against his liability insurer for declaratory judgment to compel the insurer to provide legal defense in tort action against the owner. The Superior Court of the District of Columbia, James A. Belson, J., rendered summary judgment for the insurer and the tavern owner appealed. The District of Columbia Court of Appeals, Reilly, Chief Judge, held that words 'as soon as practicable' within liability policy requirement that insured will notify the insurer of an occurrence as soon as practicable means within reasonable time in view of all the facts and circumstances of each particular case. The Court further held that where tavern owner was aware of involvement of one of his employees in alleged encounter with aggrieved customer, was aware of likelihood of monetary claim for assault and battery and owner made voluntary payment of customer's medical expenses, the owner did not comply with requirement of liability policy that he notify the insurer 'as soon as practicable' when he waited 45 days after the incident before notifying the insurer. Affirmed.
2. *Crifasi v. Houston Fire & Cas. Ins. Co.*, 222 La. 247, 62 So. 2d 395 (1952)
    - Plaintiff-insured's business was burglarized over Christmas holiday. Insured brought action against insurer on safe burglary policy providing that unless books and accounts are kept by insured and loss can be accurately determined therefrom by insurer, insurer shall not be liable for any loss or damage under the policy. The 19th Judicial District Court of the Parish of East Baton Rouge, Carlos G. Spaht, J., entered judgment for insured for $1,158.67 rather than for full amount of policy or $3,000 plus penalties and attorney's fees, as requested by insured, on ground that loss was $4,192.68, and an appeal was taken. The Supreme Court,

Ponder, J., held that it agreed with the disposition of the case by the 19th Judicial District Court and adopted its opinion.

3. *Safeway Ins. Co. of Alabama v. Taylor*, 758 So. 2d 523 (Ala. 1999)
    - Insured's child wrecked car on Christmas day. Automobile insurer sought declaratory judgment that the policy provided no coverage for accident while the named insured's teenage child was driving. Named insured and child counterclaimed for bad faith. The Circuit Court, Jefferson County, CV-97-3120, William J. Wynn, J., entered judgment in favor of named insured and child. Insurer appealed. The Supreme Court, Cook, J., held that exclusion of coverage while the vehicle was being driven by a person who was under the age of 25 and was a resident in the named insured's household was unambiguous and barred coverage. Reversed and judgment rendered.

B. **Liability**

1. *Roylance v. Davies*, 18 Utah 2d 395, 424 P.2d 142 (1967)
    - "The plaintiff was a guest in his buddy's automobile on a Christmas day. Both had celebrated the occasion with a few nips of liquid refreshment containing the proper amount of alcohol to bring cheer and gladness to the hearts of the partakers. Before the day was over, the defendant driver had run his car against a steel light pole causing the plaintiff to sustain injuries."
    - Action by guest passenger against driver for injuries sustained in automobile accident. The Fourth District Court, Utah County, Joseph E. Nelson, J., entered judgment on jury verdict for plaintiff and the defendant appealed. The Supreme Court, Ellett, J., held that where defendant drove automobile on shoulder of highway and in the wrong direction on multi-laned highway and automobile struck obstruction on shoulder of road which caused automobile to hit light pole, conduct of defendant did not constitute willful misconduct.
    - Judgment reversed with directions.
2. *Smith v. Bullington*, 499 S.W.2d 649, 652 (Tenn. Ct. App. 1973)
    - "On Christmas Day, the Bullington family undertook a trip from Fayetteville to Ardmore in two vehicles."
    - Consolidated suits arising out of a motor vehicle collision for injuries to passengers in automobile which collided with an automobile operated by defendants, and for death of a passenger in defendants' automobile which had been rented from a third defendant. From judgments of the Circuit Court, Giles County, W. A. Harwell, J., the defendants appealed and the plaintiffs suing for the death of the passenger appealed from the reduction of their judgment. The Court of Appeals, Todd, J., held, inter alia, that there was evidence to support trial court's finding against the defendants, that the third defendant was not liable on theory that it supplied the automobile with slick tires, and that the $50,000 award for death as reduced from original $75,000 award would be affirmed.
    - Affirmed in part, and reversed and dismissed in part.