FOR BETTER OR FOR WORSE? THE IOWA SUPREME COURT'S DECISION TO COMPENSATE THE INNOCENT COINSURED SPOUSE IN *SAGER V. FARM BUREAU MUTUAL INSURANCE COMPANY*

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I. INTRODUCTION

"'[A]rson'[1] . . . is the leading cause of dollar loss, the second leading cause of deaths, and the third leading cause of fires and injuries in residencies."[2] According to the National Fire Data Center (NFDC) of the

1. The definition of arson employed in the cited study is somewhat broader than the term's strict legal definition. U.S. FIRE ADMIN./NAT'L FIRE DATA CTR., DEP'T HOMELAND SEC., FIRE IN THE UNITED STATES 1992–2001 62 (13th ed. 2004), *available at* http://www.fldfs.com/sfm/pdf/Rpt_FEMA_FireInTheUnitedStates_1992-2001.pdf.

2. *Id.*

United States Fire Administration (USFA), there were approximately 14,611 "incendiary/suspicious" structure fires per year in the United States from 1992 through 2001.[3] Each year, these fires caused an estimated 248 deaths, 660 injuries, and over $359 million in damage to personal residences.[4] The fires that cause this dramatic loss in life and property are ignited for many reasons.[5] While some arsonists set fires to defraud insurance companies,[6] vandalism is the most prolific cause of intentionally set fires.[7] Arson perpetrated due to either of these incendiary motives can spark the issue of the innocent coinsured spouse.[8]

The purpose of this Note is to thoroughly examine the problem of the innocent coinsured spouse and to consider how the Iowa Supreme Court's recent decision in *Sager v. Farm Bureau Mutual Insurance Co.*[9] affected the law regarding that problem. To accomplish this, Part I introduces the problem by exploring the factual circumstances in which the problem commonly arises. Part II explains how courts have historically dealt with the problem, while Part III will discuss how the Iowa Supreme Court initially handled the issue of the innocent coinsured spouse. Part IV will examine the modern trend in innocent coinsured jurisprudence. In particular, this section of the Note will examine, in depth, the Iowa Supreme Court's recent ruling in *Sager*. Finally, Part V will discuss the aftermath of the court's ruling in *Sager*.

II. THE COMMON FACTUAL SCENARIO

While some have called *Sager* a landmark case for its legal conclusions,[10] *Sager* also illustrates the common factual scenario from which the problem of the innocent coinsured spouse arises.[11] In *Sager*, the

3. *Id*. at 63.

4. *Id*. at 62.

5. *Id*. at 62, 64 ("[V]andalism, revenge, fraud, and quarrels are common motives according to fire officials.").

6. An estimated 14% of arsonists set fires for the purpose of defrauding an insurance company. Ins. Info. Inst., Arson, http://www.iii.org/media/hottopics/insurance/test1/ (last visited Feb. 5, 2006).

7. *Id*.

8. *Compare, e.g.*, Trinity Universal Ins. Co. v. Kirsling, 73 P.3d 102 (Idaho 2003) (arising from an instance of arson-for-profit), *with* Sager v. Farm Bureau Mut. Ins. Co., 680 N.W.2d 8 (Iowa 2004) (arising from an instance of arson as vandalism).

9. Sager v. Farm Bureau Mut. Ins. Co., 680 N.W.2d 8 (Iowa 2004).

10. *See* Frank Santiago, *Beanie Babies at Heart of 'Landmark Case*,' DES MOINES REG., May 13, 2004, at 1B.

11. *See Sager*, 680 N.W.2d at 9–10.

Sager's domestic situation heated up when Ramona Sager told her husband, Robert, that she no longer wanted to be his wife.[12] The court provided Robert's deposition testimony describing his enraged reaction:

> She had Beanie Babies[13] everywhere and I was sick of them sons of bitches and I decided I was going to barbecue them. I had a big brush pile that I was going to burn outside and I had decided I was going to get all her Beanie Babies and take them out and barbecue the sons of bitches and went to get the charcoal lighter. . . . I went in the basement to get the charcoal lighter and take it upstairs and fry her Beanie Babies and all her Christmas stuff was sitting there and I sprayed some charcoal lighter on her Christmas stuff and threw a couple of matches at it and it flared up a lot faster than I thought it was going to. . . .[14]

As a result of the ensuing conflagration, the Sagers' marital home sustained approximately $100,000 in damages.[15] The couple later divorced, and Ramona sought to recover under the couple's Farm Bureau Mutual Insurance Company (Farm Bureau) homeowners' insurance policy.[16] However, Farm Bureau denied Ramona's claim.[17] Thus, the question manifest was whether Ramona, a coinsured spouse guilty of no malfeasance related to the loss, was able to recover despite her husband's culpability in causing the loss.[18]

Such a question can arise in many contexts. *Sager* typifies the factual scenario where one spouse burns down the marital home while in an emotionally volatile state, and the other innocent coinsured spouse is left with only the hope of recouping the loss via the couple's homeowners' insurance policy.[19] The problem of the innocent coinsured spouse can also arise when one spouse sets the marital home ablaze in order to defraud the insurance company, but does so without the other spouse's knowledge.[20]

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12. *Id*. at 9.

13. Beanie Babies are beanbag toys turned collector items produced by Ty, Inc., a Westmont, Illinois company. James M. Pethokoukis, *Update: Ty Warner*, U.S. NEWS & WORLD REP., Feb. 16, 2004, at EE8.

14. *Sager*, 680 N.W.2d at 9 n.1.

15. *Id*. at 9.

16. *Id*.

17. *Id*.

18. *Id*. at 9–10.

19. *Id*.; *see also* Volquardson v. Hartford Ins. Co., 647 N.W.2d 599, 603 (Neb. 2002) (involving a suicidal husband torching the marital home in an attempt to commit suicide).

20. *See, e.g.*, Trinity Universal Ins. Co. v. Kirsling, 73 P.3d 102, 104 (Idaho

Additionally, such a problem can arise when a loss occurs, but one spouse commits fraud in reporting the loss.[21]

While perhaps most intriguing when it arises involving married coinsureds, the problem of the innocent coinsured spouse does not even have to involve married people. That is, any one of a number of coinsured persons or entities can commit arson or insurance fraud and leave the right of their coinsured in limbo.[22] For example, in *Lane v. Security Mutual Insurance Co.*,[23] the seventeen-year-old son of Joretta Lane, an insured under the contract, intentionally set fire to Joretta's house.[24] There again, the question arose whether Joretta could recover under her insurance policy despite her son's arson.[25]

III. HISTORICAL ANALYSIS OF THE INNOCENT COINSURED SPOUSE PROBLEM

A. *Traditional Common Law View: Implied Exception Against Recovery for the Innocent Coinsured*

The problem of the innocent coinsured has arisen under these various contexts for quite some time, providing almost 120 years of jurisprudence on the issue.[26] The manner in which courts have analyzed the problem of the innocent coinsured has evolved over time. Examining that evolution provides necessary insight into the reasoning of today's courts.

2003) (involving a coinsured husband who was later "convicted of arson and insurance fraud in connection with the fire at the home").

21. *See, e.g.*, Sales v. State Farm Fire & Cas. Co., 849 F.2d 1383, 1384 (11th Cir. 1988) (indicating that Mr. Sales submitted a sworn statement to his insurance company claiming a legitimate loss even though he was arrested for setting the house on fire).

22. *See, e.g.*, McCauley Enters., Inc. v. N.H. Ins. Co., 716 F. Supp. 718, 719 (D. Conn. 1989) (involving co-owners of a business who are named coinsureds under the business's policy, one of whom set fire to insured real property); Fed. Ins. Co. v. Wong, 137 F. Supp. 232, 232–33 (S.D. Cal. 1956) (involving coinsured joint venturers, one of whom burned coinsured equipment); Monaghan v. Agric. Fire Ins. Co., 18 N.W. 797, 798–803 (Mich. 1884) (involving an arsonist mother and innocent coinsured children); Lane v. Sec. Mut. Ins. Co., 747 N.E.2d 1270, 1271 (N.Y. 2001) (involving a seventeen-year-old son setting fire to his family home).

23. Lane v. SEC Mut. Ins. Co., 747 N.E.2d 1270 (N.Y. 2001).

24. *Lane*, 747 N.E.2d at 1271.

25. *Id.*

26. *See, e.g.*, *Monaghan*, 18 N.W. at 803 (representing an early instance of the problem of the innocent coinsured).

Initially, courts did not treat the innocent coinsured favorably.[27] In the first ninety years courts considered the issue, comparatively few cases allowed recovery by an innocent coinsured.[28] The traditional view was "'that an innocent spouse may not recover under a fire insurance policy for damages resulting from the other spouse's fraud by deliberate burning of their jointly owned property.'"[29] This traditional view basically implied an exception into the policy of insurance[30] based on the principle of fortuitousness, the joint obligations of the coinsured, property analyses, and public policy.[31]

Early on, "the insurance industry took comfort from a small group of cases, decided in an era when arson cases were rarely litigated, holding that when a policy is written in the joint names of a husband and wife, there arises a joint obligation not to commit fraud."[32] *Klemens v. Badger Mutual*

27. *See* Marvin L. Karp, *Arson and the Innocent Co-Insured*, THE BRIEF, Spring 1993, at 9, 9 (stating that the initial holdings from cases in the 1970s precluded innocent coinsureds from recovering).

28. *See, e.g.*, Mercantile Trust Co. v. N.Y. Underwriters Ins. Co., 376 F.2d 502, 506 (7th Cir. 1967) (representing one of the few early cases where recovery was allowed); Hoyt v. N.H. Fire Ins. Co., 29 A.2d 121, 123 (N.H. 1942) (same).

29. St. Paul Fire & Marine Ins. Co. v. Molloy, 433 A.2d 1135, 1140 (Md. 1981) (quoting Steigler v. Ins. Co. of N. Am., 384 A.2d 398, 399 (Del. 1978)).

30. *See* Am. Econ. Ins. Co. v. Liggett, 426 N.E.2d 136, 141 (Ind. Ct. App. 1981) (arguing that an implied exception arises from the nature of the agreement because it serves public policy by "'first, avoiding profit from wrongdoing, second, deterring crime, third, avoiding frauds against insurers, and fourth, maintaining coverage of a scope probably consistent with the reasonable expectations of the contracting parties on matters as to which no intention or expectation was expressed'" (quoting ROBERT E. KEETON, INSURANCE LAW § 5.3(a) (1971))).

31. *See generally* Karp, *supra* note 27, at 10.

32. *Id.* at 9–10; *see also* Fed. Ins. Co. v. Wong, 137 F. Supp. 232, 233 (S.D. Cal. 1956) (recognizing that, in a non-husband-and-wife context, "[w]here the property is jointly owned, or there is a joint obligation on the part of the owners to save and preserve the property, an innocent owner cannot recover on the policy where a coowner willfully set the property on fire" (quotation omitted)); Kosior v. Cont'l Ins. Co., 13 N.E.2d 423, 425 (Mass. 1938) (holding the policy to be joint and the destruction of the marital home as "an act of 'the insured'" under the policy, which rendered the policy void); Bridges v. Commercial Standard Ins. Co., 252 S.W.2d 511, 512 (Tex. App. 1952), *abrogation recognized by* Tex. Farmers Ins. Co. v. Murphy, 996 S.W.2d 873 (Tex. 1999) (holding that "[w]here two persons have a joint interest in property which is destroyed by being intentionally burned by one of them, the other, though innocent, cannot recover on a fire insurance policy"); Jones v. Fid. & Guar. Ins. Corp., 250 S.W.2d 281, 282 (Tex. App. 1952), *overruled by* Kulubis v. Tex. Farm Bureau Underwriters Ins. Co., 706 S.W.2d 953 (Tex. 1986) (refusing recovery because "the contractual obligation of each [coinsured] to use all reasonable means to save and preserve the insured property at and after a loss was a joint obligation of both");

Insurance Co. of Milwaukee[33] was the most recent of these cases and counsel for the respondent stated the rule effectively: "Because [the] agreement is joint with each insured promising that he and the other would not commit this neglect, the breach of the policy caused by intentional destruction is chargeable to both insureds and precludes recovery by the innocent joint insured."[34]

During this nascent stage of innocent coinsured jurisprudence, courts also employed property analyses in refusing to allow coinsureds to recover.[35] Those courts based their decisions "on the joint nature of the property ownership and not the breach of a joint obligation of the insureds."[36] Various courts held that property ownership in joint tenancy, tenancy by the entirety, or community property served to void the policy as to both guilty and innocent coinsureds.[37]

A third basis for refusing to allow innocent coinsureds to recover was grounded in public policy.[38] Few would argue against the proposition that

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Klemens v. Badger Mut. Ins. Co. of Milwaukee, 99 N.W.2d 865, 866 (Wis. 1959), *overruled by* Hedtcke v. Sentry Ins. Co., 326 N.W.2d 727 (Wis. 1982) (holding the breach of the policy agreement not to neglect to save and protect the property "is chargeable to both insureds and precludes recovery by the innocent joint insured"); Bellman v. Home Ins. Co., 189 N.W. 1028, 1028 (Wis. 1922), *overruled by Hedtcke*, 326 N.W.2d 727 (holding in a business partnership context that joint obligations of the partners precluded recovery).

33. Klemens v. Badger Mut. Ins. Co. of Milwaukee, 99 N.W.2d 865 (Wis. 1959), *overruled by Hedtcke*, 326 N.W.2d 727.

34. *Id.* at 866.

35. *See, e.g.*, Short v. Okla. Farmers Union Ins. Co., 619 P.2d 588, 589–90 (Okla. 1980) (holding that allowing recovery for the innocent spouse where the coinsureds held the property as joint tenants is "flatly against public policy"); *Bridges*, 252 S.W.2d at 512 (holding that community property held by husband and wife produced an undividable interest barring recovery by the innocent wife); Rockingham Mut. Ins. Co. v. Hummel, 250 S.E.2d 774, 776 (Va. 1979) (referring to the Virginia property law principal that the interests in property held in tenancy by the entirety cannot be severed by the act of one spouse alone and also holding the contract to be joint).

36. *Short*, 619 P.2d at 590 (citations omitted).

37. *See, e.g.*, *id.* (refusing to allow innocent wife to recover because her joint-tenant husband torched the marital home); *Bridges*, 252 S.W.2d at 512 (refusing to allow innocent husband to recover because his wife, as co-owner of community property, set fire to the marital home); *Hummel*, 250 S.E.2d at 776 (refusing to allow innocent wife, as cotenant by the entirety, to recover because of husband's arson).

38. *See, e.g.*, *Short*, 619 P.2d at 590 (characterizing recovery by an innocent coinsured as "flatly against public policy"); Bellman v. Home Ins. Co., 189 N.W. 1028, 1028 (Wis. 1959), *overruled by* Hedtcke v. Sentry Ins. Co., 326 N.W.2d 727 (Wis. 1982) (characterizing recovery for an innocent coinsured as unjust).

permitting recovery by an insured who committed arson "would reward crime and shock the most fundamental notions of justice."[39] *Bellman v. Home Insurance Co.*,[40] a leading case in early innocent coinsured jurisprudence,[41] held recovery by an innocent coinsured to be "likewise repugnant to an intuitive sense of justice."[42] In the same vein, the court in *Short v. Oklahoma Farmers Union Insurance Co*.[43] justified its refusal of recovery to an innocent coinsured on public policy grounds, holding that "[t]o allow recovery on an insurance contract where the arsonist has been proven to be a joint insured would allow funds to be acquired by the entity of which the arsonist is a member and is flatly against public policy."[44] The court there implied that a policy against recovery would deter arson and abate the threat arson poses to nearby landowners, firefighters, and the general public.[45]

B. *Discarding the Traditional View and Its Implied Exception: Recovery for the Innocent Coinsured*

In the late 1970s, insurance companies increasingly began litigating fire insurance claims where the loss was due to arson.[46] With this increased litigation came a new common law rule regarding the innocent coinsured.[47] *Howell v. Ohio Casualty Insurance Co.*[48] led this new and enlightened line of jurisprudence.[49] *Howell* and its progeny addressed and debased all of the major justifications for the early common law rule against recovery.[50]

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39. *Bellman*, 189 N.W. at 1028.

40. Bellman v. Home Ins. Co., 189 N.W. 1028 (Wis. 1959), *overruled by Hedtcke*, 326 N.W.2d 727.

41. *See* Klemens v. Badger Mut. Ins. Co. of Milwaukee, 99 N.W.2d 865, 866 (Wis. 1959), *overruled by Hedtcke*, 326 N.W.2d 727 (characterizing *Bellman* as a "leading and much cited[] case").

42. *Bellman*, 189 N.W. at 1028.

43. Short v. Okla. Farmers Union Ins. Co., 619 P.2d 588 (Okla. 1980).

44. *Id.* at 590.

45. *Id*.

46. *See* Karp, *supra* note 27, at 9 (pointing out that insurance companies did not begin vigorously resisting fire insurance claims until the 1970s).

47. *See id.* at 9–10 ("By the late 1970s, only a handful of states were still finding [the old common law] approach to be persuasive.").

48. Howell v. Ohio Cas. Ins. Co., 327 A.2d 240 (N.J. Super. Ct. App. Div. 1974).

49. *See* Lovell v. Rowan Mut. Fire Ins. Co., 274 S.E.2d 170, 171–72 (N.C. 1981) (naming *Howell* as the leading case granting recovery to the innocent coinsured spouse).

50. *See, e.g.*, *Howell*, 327 A.2d at 242 (addressing and rejecting the importance

Howell involved a husband and wife who owned a house as tenants by the entirety.[51] The husband set fire to the insured property and committed suicide while the house was in flames.[52] The *Howell* court allowed recovery for the innocent wife "irrespective of whether the interests of the wife and husband in the tenancy by the entirety, in the personal property, or in the contract rights under the policy [were] deemed to be joint or several."[53] Instead, the court found the significant factor to be the responsibility for the fraud.[54] Because the husband acted independently from his wife, the responsibility was found to be several and separate, and the court refused to impute the husband's fraud to the wife.[55] The *Howell* court added that recovery for the innocent coinsured was also "supported by the policy provisions . . . though [the court did] not deem them necessarily controlling."[56] Specifically, the policy named the husband, wife, or both as the insureds.[57] Thus, the innocent coinsured's reasonable expectation was that the policy provide recovery despite fraudulent conduct by a coinsured.[58]

Later cases built upon *Howell* adopted its justifications for recovery and added new ones, solidifying the rule that an innocent coinsured could recover despite the fraudulent activity of another coinsured. Just four years after *Howell*, the Supreme Court of Delaware handed down *Steigler v. Insurance Co. of North America*,[59] holding the reasonable expectations of the innocent coinsured to be a controlling reason for recovery.[60] Additionally, the court rejected the legal oneness theory of husband and wife by calling it "quaint" and contrary to public policy.[61]

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of the joint interests of the coinsureds either in the destroyed property or under the insurance policy); Krupp v. Aetna Life & Cas. Co., 479 N.Y.S.2d 992, 998 (App. Div. 1984) (holding that "considerations of public policy, equity and fundamental justice require that . . . the independent wrongful fraudulent conduct of one spouse cannot serve to bar recovery under the policy by an innocent coinsured spouse" (citing Winter v. Aetna Cas. & Sur. Co., 409 N.Y.S.2d 85 (Sup. Ct. 1978); *Howell*, 327 A.2d at 240)).

51. *Howell*, 327 A.2d at 241.

52. *Id*.

53. *Id*. at 242.

54. *Id*.

55. *Id*.

56. *Id*.

57. *Id*.

58. *Id*.

59. Steigler v. Ins. Co. of N. Am., 384 A.2d 398 (Del. 1978).

60. *Steigler*, 384 A.2d at 399–401 (examining *Howell* and employing the reasonable expectations doctrine).

61. *Id*. at 401.

In the years after *Howell*, the number of courts allowing recovery rapidly increased. As recently as 1978, "[t]he majority of jurisdictions faced with the question have ruled that there can be no recovery where the interests of the co-insured are joint."[62] But by 1981, the Court of Appeals of Maryland, first hearing the issue in *St. Paul Fire & Marine Insurance Co. v. Molloy*,[63] cited fifteen jurisdictions allowing recovery and only five refusing recovery.[64] At least one observer has argued that "the death knell for the 'old rule' was finally sounded in late 1982."[65] This death knell arguably came in the form of the Wisconsin Supreme Court's decision in

62. Winter v. Aetna Cas. & Sur. Co., 409 N.Y.S.2d 85, 87 (Sup. Ct. 1978) (citing cases in Alabama, California, Massachusetts, and Michigan as following the traditional rule and citing cases in Pennsylvania and Texas as following the new rule).

63. St. Paul Fire & Marine Ins. Co. v. Molloy, 433 A.2d 1135, 1139 (Md. 1981) (recognizing the case as "an issue of first impression" in Maryland).

64. *Id*. at 1139–40. *Compare* Mercantile Trust Co. v. N.Y. Underwriters Ins. Co., 376 F.2d 502, 505–06 (7th Cir. 1967) (allowing an innocent coinsured to recover "despite arson or fraud committed by the other insured"), Hosey v. Seibels Bruce Group, S.C. Ins. Co., 363 So. 2d 751, 753–54 (Ala. 1978) (allowing innocent to recover because wrongful conduct by spouse is not attributed to the innocent coinsured "solely by virtue of the marital relationship" (citation omitted)), Arenson v. Nat'l Auto. & Cas. Ins. Co., 286 P.2d 816, 818 (Cal. 1955) (allowing innocent to recover despite wrongdoings by coinsured son), *Steigler*, 384 A.2d at 399–402 (permitting recovery for innocent coinsured spouse), Everglades Marina, Inc. v. Am. E. Dev. Corp., 374 So. 2d 517, 518–19 (Fla. 1979) (rejecting to extend public policy to third-party beneficiaries and, therefore, allowing boat owners to recover from dock fire), Auto-Owners Ins. Co. v. Eddinger, 366 So. 2d 123, 123–24 (Fla. App. 1979) (allowing recovery for innocent coinsured spouse), Econ. Fire & Cas. Co. v. Warren, 390 N.E.2d 361, 363–64 (Ill. App. 1979) (same), Hildebrand v. Holyoke Mut. Fire Ins. Co., 386 A.2d 329, 331–32 (Me. 1978) (same), Simon v. Sec. Ins. Co., 210 N.W.2d 322, 323–26 (Mich. 1973) (same), Hoyt v. N.H. Fire Ins. Co., 29 A.2d 121, 122–23 (N.H. 1942) (not requiring plaintiffs to proceed with proof of their innocence and directing verdicts in their favor), *Howell*, 327 A.2d at 242–43 (allowing recovery for innocent coinsured spouse), Delph v. Potomac Ins. Co., 620 P.2d 1282, 1284–85 (N.M. 1980) (same), *Winter*, 409 N.Y.S.2d at 87–88 (same), Lovell v. Rowan Mut. Fire Ins. Co., 274 S.E.2d 170, 171–74 (N.C. 1981) (same), *and* Ryan v. MFA Mut. Ins. Co., 610 S.W.2d 428, 428–37 (Tenn. App. 1980) (same), *with* Mele v. All-Star Ins. Corp., 453 F. Supp. 1338, 1341–42 (E.D. Pa. 1978) (barring coinsured's recovery due to fraud by other coinsured), Short v. Okla. Farmers Union Ins. Co., 619 P.2d 588, 589–94 (Okla. 1980) (same), Matyuf v. Phoenix Ins. Co., 27 Pa. D. & C.2d 351, 355–66 (1933) (same), Coop. Fire Ins. Ass'n of Vt. v. Domina, 399 A.2d 502, 502–03 (Vt. 1979) (rejecting recovery on basis of characteristics of tenancy by the entirety), Rockingham Mut. Ins. Co. v. Hummel, 250 S.E.2d 774, 775–76 (Va. 1978) (barring coinsured's recovery due to fraud by other coinsured), *and* Klemens v. Badger Mut. Ins. Co., 99 N.W.2d 865, 866 (Wis. 1959), *overruled by* Hedtcke v. Sentry Ins. Co., 326 N.W.2d 727 (Wis. 1982) (same).

65. *See* Karp, *supra* note 27, at 10.

Hedtcke v. Sentry Insurance Co.[66] The court overruled its decision in *Klemens*, a leading case refusing recovery,[67] calling that decision "an inappropriate method of deterring crime and preventing a wrongdoer from profiting from his or her own wrong."[68]

The development of the rationale underlying courts' decisions to allow innocent coinsureds to recover continued to discredit the implied exception against recovery. Cases like *Hildebrand v. Holyoke Mutual Fire Insurance Co.*[69] and *St. Paul Fire & Marine Insurance Co. v. Molloy*[70] emphasized the contract interpretation in allowing recovery.[71] The analyses in these cases were based on established principles of contract interpretation, such as construction against the insurer in the case of ambiguity[72] and the reasonable expectations of the insured.[73] Most importantly, courts began to stress the language from *Howell* that an insurance company could contract for its obligation to coinsureds to be joint as long as it did so unambiguously.[74] For example, *Molloy* held that "'unless the terms [of an insurance policy] are plainly to the contrary . . . the obligation of the carrier should be considered several as to each person insured.'"[75] Obviously, the inverse of that statement is that the terms of the policy, if unambiguously stated, may make the obligation joint. In

66. Hedtcke v. Sentry Ins. Co., 326 N.W.2d 727 (Wis. 1982); *see* Karp, *supra* note 27, at 10.

67. *See* Karp, *supra* note 27, at 10 (referring to *Klemens* as a "leading case[] barring an 'innocent spouse' from recovery").

68. *Hedtcke*, 326 N.W.2d at 740.

69. Hildebrand v. Holyoke Mut. Fire Ins. Co., 386 A.2d 329 (Me. 1978).

70. St. Paul Fire & Marine Ins. Co. v. Molloy, 433 A.2d 1135 (Md. 1981).

71. *See Hildebrand*, 386 A.2d at 331 (employing a contract analysis and reaching the result "irrespective of whether the interests of the plaintiff and her husband in the destroyed property are deemed to be joint or several"); *Molloy*, 433 A.2d at 1140 (holding that "whether an innocent co-insured . . . can recover under an insurance contract, depends primarily upon whether the parties intended, and thus whether the contract contemplates, the obligations of the co-insureds to be joint or several").

72. *See Hildebrand*, 386 A.2d at 331 (construing "the term 'insured' . . . to mean a specific insured, namely, the insured who (1) is responsible for causing the loss and (2) is seeking to recover under the policy" citing Pawtucket Mut. Ins. Co. v. Lebrecht, 190 A.2d 420 (N.H. 1963)).

73. *See Molloy*, 433 A.2d at 1142 (holding that the ordinary insured would reasonably expect to be covered in the situation (citations omitted)).

74. *See, e.g.*, *id*.

75. *Id*. (alteration in original) (quoting Howell v. Ohio Cas. Ins. Co., 327 A.2d 240, 243 (N.J. Super. Ct. App. Div. 1974)).

American Economy Insurance Co. v. Liggett,[76] the Indiana Court of Appeals seized on this opportunity and explicitly stated that an insurer could deny recovery to an innocent coinsured if the insurer used clear and prominent language.[77] The court suggested the exception "be written in bold letters and red ink across the face of the policy: IF YOU OR ANY PERSON INSURED BY THIS POLICY DELIBERATELY CAUSES A LOSS TO PROPERTY INSURED THEN THIS POLICY IS VOID AND WE WILL NOT REIMBURSE YOU OR ANYONE ELSE FOR THAT LOSS."[78] This fits with the idea that the reasonable expectations of the insured should govern. If the policy unambiguously states that the act of any insured bars recovery, then the insured should reasonably expect that outcome.

C. *Replacing the Implied Exclusion with an Explicit One*

Not surprisingly, insurance companies quickly accepted this challenge and took the opportunity to again exclude coverage for the innocent coinsured—this time explicitly.[79] Insurers attempted to employ less ambiguous and more relevant language, including using the terms "an insured" and "any insured" in place of "the insured."[80] For example, the exclusion at issue in *Hildebrand* read:

> This entire policy shall be void if, whether before or after a loss, *the insured* has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of *the insured* therein, or in case of any fraud or false swearing by *the insured* relating thereto.[81]

The court then construed the term "'insured' . . . to mean a specific insured, namely, the insured who (1) is responsible for causing the loss and

76. Am. Econ. Ins. Co. v. Liggett, 426 N.E.2d 136 (Ind. Ct. App. 1981).

77. *See id.* at 141.

78. *Id*.

79. *See, e.g.*, Bryant v. Allstate Ins. Co., 592 F. Supp. 39, 41–42 (E.D. Ky. 1984) (interpreting a policy exclusion barring recovery when hazard of loss was increased by an insured).

80. *Compare, e.g.*, Hildebrand v. Holyoke Mut. Fire Ins. Co., 386 A.2d 329, 331 (Me. 1978) (construing a policy containing an exclusion excluding "the insured"), *with Bryant*, 592 F. Supp. at 41 (interpreting a policy exclusion barring recovery when the hazard of loss was increased by "*an* insured" (emphasis added)).

81. *Hildebrand*, 386 A.2d at 331 (emphases added) (internal quotation omitted).

(2) is seeking to recover under the policy."[82] The insurer in *Bryant v. Allstate Insurance Co.*[83] dealt with this problem by refining the policy language to remove the ambiguity caused by using the phrase "the insured."[84] The policy was written so claims involving misrepresentation by *any* insured person and neglect or increased hazard by *an* insured were excluded.[85] The court found this language "clear as spring water," and effective in precluding the innocent coinsured spouse from recovery.[86]

Not all courts found policy exclusions containing the phrase "an insured" to unambiguously bar recovery by an innocent coinsured.[87] For this reason, insurers added the phrase "any insured" to their policy exclusions.[88] The exclusion at issue in *Webb v. American Family Mutual Insurance Co.*[89] provided that the "entire policy is void if, before or after a loss, any insured has: a. intentionally concealed or misrepresented any material fact or circumstance; b. engaged in fraudulent conduct; or c. made false statements; relating to this insurance."[90] The court found the policy clearly void as to all insureds if any insured acted fraudulently.[91]

Besides fortifying the language of previously employed exclusions, more insurance companies added intentional loss exclusions.[92] The Iowa Supreme Court was one of the first courts to confront one of these new

82. *Id*.

83. Bryant v. Allstate Ins. Co., 592 F. Supp. 39 (E.D. Ky. 1984).

84. *Bryant*, 592 F. Supp. at 41 (interpreting a policy exclusion barring recovery when hazard of loss was increased by *an* insured).

85. *Id*.

86. *Id*.

87. *See, e.g.*, Mich. Millers Mut. Ins. Corp. v. Benfield, 140 F.3d 915, 926 (11th Cir. 1998) (holding the phrase "an insured," as opposed to "*any* insured," in a homeowners' policy was ambiguous because it did not clearly impose joint obligations on coinsureds); McFarland v. Utica Fire Ins. Co., 814 F. Supp. 518, 525 (S.D. Miss. 1992) (same). *But cf.* Rachel R. Watkins Schoenig, Note, *Property Insurance and the Innocent Co-Insured: Was it All Pay and No Gain for the Innocent Co-Insured?*, 43 DRAKE L. REV. 893, 900 (1995) (noting that most courts have found the phrase to unambiguously bar recovery by an innocent coinsured, but courts have varied on interpretations of "the insured," "an insured," and "any insured").

88. *See, e.g.*, Sales v. State Farm Fire & Cas. Co., 849 F.2d 1383, 1385 (11th Cir. 1988) (involving a policy excluding recovery if *any* insured has intentionally concealed or misrepresented any material fact).

89. Webb v. Am. Family Mut. Ins. Co., 493 N.W.2d 808 (Iowa 1992).

90. *Id.* at 810–11 (internal quotation omitted).

91. *Id.* at 813.

92. Two of the first cases to construe intentional loss exclusion clauses were *Woodhouse v. Farmers Union Mutual Insurance Co.*, 785 P.2d 192, 193 (Mont. 1990), and *Vance v. Pekin Insurance Co.*, 457 N.W.2d 589, 592 (Iowa 1990).

intentional loss exclusions.[93] In *Vance v. Pekin Insurance Co.*,[94] the insurer added the following exclusion: "We do not insure for loss caused directly or indirectly by any of the following: . . . Intentional Loss, meaning any loss arising out of any act committed: a. by or at the direction of *an* insured."[95] The court found the language unambiguous[96] and, despite some public policy analysis, raised no concerns about the legitimacy of such an exclusion.[97] In fact, many courts have construed intentional loss exclusions in the years after *Vance* and have not held them void as against public policy.[98]

IV. THE OLD IOWA RULE

Besides being one of the first cases to address an intentional loss exclusion, *Vance* was also the first case involving an innocent coinsured spouse to come before the Iowa Supreme Court.[99] As such, analysis of *Vance* is important in understanding the impact of *Sager*. *Vance* came to the Iowa Supreme Court in the form of two certified questions from the United States District Court for the Southern District of Iowa.[100] As stated previously, the court in *Vance* refused recovery for the innocent coinsured.[101]

The court did not base its refusal of recovery on the old common law

93. *See Vance*, 457 N.W.2d at 592.

94. Vance v. Pekin Ins. Co., 457 N.W.2d 589 (Iowa 1990).

95. *Id*. at 592.

96. *Id*. at 593.

97. *Id*. at 590 (recognizing two public policy arguments including the following: (1) "avoiding a possible benefit to the wrongdoer;" and (2) "preventing the imposition of fraud on an innocent party" (citation omitted)).

98. *See, e.g.*, Volquardson v. Hartford Ins. Co., 647 N.W.2d 599, 607 (Neb. 2002) (construing an intentional loss exclusion and explicitly stating "that there is no public policy specifically articulated by Nebraska statutes or case law which would preclude application of the intentional acts exclusion").

99. *Vance*, 457 N.W.2d at 590 (stating that the decision was on the question of whether an innocent coinsured may recover under an insurance policy, certified from the United States District Court for the Southern District of Iowa); *see also* Jensen v. Jefferson County Mut. Ins. Ass'n., 510 N.W.2d 870, 871 (Iowa 1994) (recognizing that "[i]n *Vance v. Pekin Insurance Co.*, we first discussed the doctrine of the innocent coinsured spouse in Iowa").

100. *Vance*, 457 N.W.2d at 590 ("First, may an innocent coinsured spouse recover under a fire insurance policy when the other coinsured spouse has been convicted of arson? Second, if the innocent coinsured spouse can recover, what proportion of the casualty loss may such coinsured recover?").

101. *Id.* at 593.

rule first expounded in *Monaghan v. Agricultural Fire Insurance Co.*[102] and later relied on in cases like *Klemens* and *Cooperative Fire Insurance Ass'n of Vermont v. Domina*.[103] In *Vance*, the Iowa Supreme Court held as a foundational matter that "[a]n innocent coinsured spouse may recover depending on whether the coinsureds' interests under the policy are joint or severable."[104] The court then rejected the use of property and marital analyses in determining whether the rights of the coinsureds were joint or several.[105] The court recognized that any "'property rationale ignores the nature and extent of the parties' rights and duties as expressed by' the insurance policy,"[106] and that "'reliance on archaic legal fictions, such as the marital "unit" . . . is untenable.'"[107]

Having discredited and rejected the old common law rule, much as the courts in *Hildebrand* and *Molloy* had done,[108] the Iowa Supreme Court adopted what it and previous courts referred to as the "best reasoned rule."[109] This approach is based on a contract analysis of the applicable insurance policy provisions and also evaluates certain equitable concerns.[110]

The best reasoned rule evolved from cases like *Hildebrand* and *Molloy*.[111] Again, these cases were some of the first cases to reject the common law rule and employ contract analyses.[112] Subsequent cases more

102. Monaghan v. Agric. Fire Ins. Co., 18 N.W. 797 (Mich. 1884).

103. Coop. Fire Ins. Ass'n v. Domina, 399 A.2d 502 (Vt. 1979).

104. *Vance*, 457 N.W.2d at 590.

105. *Id.* at 591.

106. *Id.* at 592 (quoting Leane English Cerven, Note, *The Problem of the Innocent Co-Insured Spouse: Three Theories on Recovery*, 17 VAL. U. L. REV. 849, 865 (1983)).

107. *Id.* at 591 (quoting Cerven, *supra* note 106, at 862).

108. *See supra* note 71 and accompanying text.

109. *Vance*, 457 N.W.2d at 592.

110. *See id.* at 592–93 (concluding under contract analysis that the innocent spouse was barred from recovery because the policy named her as *an* insured).

111. *See* Hildebrand v. Holyoke Mut. Fire Ins. Co., 386 A.2d 329, 331 (Me. 1978) (holding, after employing the fully developed best reason rule, that the policy allowed recovery by the innocent spouse as a "Named Insured" regardless of the fact that the loss was a result of arson by another insured); St. Paul Fire & Marine Ins. Co. v. Molloy, 433 A.2d 1135, 1141–42 (Md. 1981) (interpreting the insurance policy to hold the insurer's obligation applies severally to each named insured, therefore allowing recovery by an innocent coinsured).

112. *See Hildebrand*, 386 A.2d at 331 (employing a contract analysis and reaching the result "irrespective of whether the interests of the plaintiff and her husband in the destroyed property are deemed to be joint or several" (citation omitted)); *Molloy*, 433 A.2d at 1140 (holding that "whether an innocent co-insured . . . can recover under an insurance contract, depends primarily upon whether the parties

fully articulated the reasoning behind the rule, each further discrediting the old common law rule and solidifying the place of contractual analysis in finding an answer for the problem of the innocent coinsured spouse.[113]

Thus, the court in *Vance* applied the "familiar principles of interpretation peculiar to insurance policies."[114] The most important of these principles, and the one upon which the case turned, is the rule that when policy language is ambiguous, it is to be construed against the insurer.[115] The Iowa Supreme Court has justified its use of this rule based on the fact that "insureds have no say in how a policy is written."[116] The court also based its reasoning on the reasonable expectations theory.[117]

The court applied these principles to an intentional loss exclusion which barred recovery for intentional loss "by or at the direction of *an* insured."[118] As stated previously, the court found the policy language to be unambiguous.[119] The court read the policy language to mean unequivocally that a loss intentionally caused by any insured bars recovery for all insureds.[120] Thus, the reasonable insured would have read the insurance policy in a similar manner and could not reasonably have expected coverage.[121]

Vance was not the only Iowa Supreme Court case to employ a contract analysis in determining the rights of an innocent coinsured. In 1992, the court decided *Webb v. American Family Mutual Insurance Co*. In *Webb*, a coinsured husband misrepresented material facts in detailing the

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intended, and thus whether the contract contemplates, the obligations of the co-insureds to be joint or several" (citations omitted)).

113. *See, e.g.*, Amick v. State Farm Fire & Cas. Co., 862 F.2d 704, 706 (8th Cir. 1988); Spezialetti v. Pac. Employer Ins. Co., 759 F.2d 1139, 1141–42 (3d Cir. 1985); McCauley Enters., Inc. v. N.H. Ins. Co., 716 F. Supp. 718, 720–21 (D. Conn. 1989); Bryant v. Allstate Ins. Co., 592 F. Supp. 39, 40–41 (E.D. Ky. 1984); Woodhouse v. Farmers Union Mut. Ins. Co., 785 P.2d 192, 194 (Mont. 1990); Maravich v. Aetna Life & Cas. Co., 504 A.2d 896, 902–08 (Pa. 1986); Felder v. N. River Ins. Co., 435 N.W.2d 263, 265 (Wis. Ct. App. 1988).

114. *Vance*, 457 N.W.2d at 592.

115. *Id.*

116. Grinnell Mut. Reinsurance Co. v. Voeltz, 431 N.W.2d 783, 785 (Iowa 1988).

117. *Vance*, 457 N.W.2d at 592; *see also* Schoenig, *supra* note 87, at 898–99 (explaining the reasonable expectations theory as it relates to the problem of the innocent coinsured spouse).

118. *Vance*, 457 N.W.2d at 592 (internal quotation omitted).

119. *Id.* at 593.

120. *Id.*

121. *Id.* at 592–93.

amount of personal property damage suffered in a fire at the couple's residence.[122] The policy contained an exclusion that read, "[t]his entire policy is void if, before or after a loss, any insured has . . . intentionally concealed or misrepresented any material fact or circumstance."[123] The court reiterated "that the decision whether to deny coverage does not depend upon how the insured property is held or upon whether the coinsureds are married," but upon a contract analysis.[124] Because the court held two years earlier in *Vance* that an insurance policy precluding recovery when the loss occurred due to the intentional actions "of 'an insured' was not ambiguous and precluded recovery for all insureds," it was easy for the *Webb* court to rule that the policy language "any insured" was also unambiguous.[125]

Two years after *Webb*, the Iowa Supreme Court was presented with yet another opportunity to address the problem of the innocent coinsured spouse and again decided to employ its version of the best reasoned rule.[126] In *Jensen v. Jefferson County Mutual Insurance Ass'n.*,[127] for the first time the court allowed recovery by an innocent coinsured spouse despite the arson committed by the other coinsured spouse.[128] The policy at issue in *Jensen* read: "**We** will not pay for loss if **you** create . . . a condition that increases the chance of loss arising from a covered peril."[129] The policy went on to define the word "you" as "the Insured named in the Declarations and spouse if living in the same household."[130] The court found this language to be ambiguous because once the definition was inserted into the exclusion the policy would read: "**We** will not pay for loss if [the Insured named in the Declarations *and* spouse if living in the same household] create or know of a condition that increases the chance of loss arising from a covered peril."[131] While the defendant insurance company argued that the language should be interpreted to mean that recovery is precluded if the chance of loss is increased by either spouse, the exclusion

122. Webb v. Am. Family Mut. Ins. Co., 493 N.W.2d 808, 813 (Iowa 1992).

123. *Id.* at 810–11 (internal quotation omitted).

124. *See id.* at 812 (citing the adoption of the best reasoned rule in *Vance*).

125. *Id.*

126. Jensen v. Jefferson County Mut. Ins. Ass'n, 510 N.W.2d 870, 871 (Iowa 1994). *Vance* and *Webb* show Iowa's version of the best reasoned rule is simply a contract analysis. *Webb*, 493 N.W.2d at 812.

127. Jensen v. Jefferson County Mut. Ins. Ass'n, 510 N.W.2d 870 (Iowa 1994).

128. *Id.* at 872.

129. *Id.* at 871.

130. *Id.*

131. *Id.* at 872 (alteration in original).

could also be interpreted to mean that the chance of loss must be increased by both spouses for recovery to be barred.[132] Because two alternate meanings exist, the policy is ambiguous[133] and should be construed in the insured's favor.[134] Thus, the innocent coinsured spouse was entitled to recover under the policy.[135]

V. THE MODERN TREND: STATUTORY CONSTRUCTION

Many jurisdictions continue to employ contract analyses exclusively in determining whether an innocent coinsured spouse is entitled to recover.[136] Recently, however, a new trend in innocent coinsured jurisprudence has emerged.[137] Even if an insurance policy unambiguously excludes recovery for the innocent coinsured spouse, courts have begun to compare the policy in question to the state's standard fire policy.[138]

Osbon v. National Union Fire Insurance Co.[139] was an early state supreme court decision that addressed the question of whether an intentional act exclusion conformed with a state's statutory standard fire insurance policy.[140] Like *Sager*, *Osbon* reflects the familiar factual scenario

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132. *Id.* at 871.

133. *Id.* (citing West Trucking Line, Inc. v. Northland Ins. Co., 459 N.W.2d 262, 263 (Iowa 1990)).

134. *Id.* (citing Connie's Constr. Co. v. Fireman's Fund Ins. Co., 227 N.W.2d 207, 210 (Iowa 1975)).

135. *Id.* at 872.

136. *See, e.g.*, Mich. Millers Mut. Ins. Corp. v. Benfield, 140 F.3d 915, 924 (11th Cir. 1998) (recognizing that "Florida's doctrine of the innocent co-insured provides that an innocent co-insured may recover . . . unless the insurance policy at issue makes clear that the policy at issue provides for joint coverage"); Watts v. Farmers Ins. Exch., 120 Cal. Rptr. 2d 694, 703–04 (Ct. App. 2002) (holding that "the language of the policy is determinative of whether the innocent spouse will be allowed recovery" and "[w]e, too, look to the rules of contract to resolve the present dispute" (citation omitted)); Utah Farm Bureau Ins. Co. v. Crook, 980 P.2d 685, 687–88 (Utah 1999) (undertaking a contract analysis of an intentional loss provision barring recovery for intentional loss at the direction of "an insured").

137. *See, e.g.*, Sager v. Farm Bureau Mut. Ins. Co., 680 N.W.2d 8, 12–15 (Iowa 2004) (comparing the policy at issue to the state statutory standard policy); Osbon v. Nat'l Union Fire Ins. Co., 632 So. 2d 1158, 1160–61 (La. 1994) (same); Borman v. State Farm Fire & Cas. Co., 499 N.W.2d 419, 420–22 (Mich. Ct. App. 1993) (same).

138. *See, e.g.*, *Osbon*, 632 So. 2d at 1161 (representing an early state supreme court decision to employ such a statutory construction in determining the right of recovery for the innocent coinsured spouse).

139. Osbon v. Nat'l Union Fire Ins. Co., 632 So. 2d 1158 (La. 1994).

140. *Id.* at 1161. At least one state court of appeals addressed the issue before *Osbon*. *See Borman*, 499 N.W.2d at 420. Additionally, numerous courts had

where a husband torches property for which he is coinsured, leaving his innocent coinsured spouse with nothing but an insurance policy and a legal battle.[141] In *Osbon*, the insurance company won the legal battle in both the district court and the court of appeals; both courts found an intentional loss exclusion effective in precluding the innocent coinsured spouse from recovery.[142]

The Louisiana Supreme Court agreed that the language of the policy was effective in excluding the innocent coinsured spouse from seeking coverage.[143] The court did not, however, end its analysis there.[144] The court next asked whether the policy conformed to Louisiana's statutory standard fire insurance policy.[145] That statute section provides that "[n]o policy or contract of fire insurance shall be made . . . unless it shall conform as to all provisions, stipulations, agreements and conditions" of the standard fire insurance policy.[146] This section previously had been interpreted by the court to require reformation of any insurance policy not "in conformity with or in excess of the standard fire insurance policy."[147] The state's standard policy provided an intentional loss provision that excluded losses occurring "[w]hile the hazard is increased by any means within the control or knowledge of *the insured*."[148] The court construed this exclusion only to bar recovery by the insured who caused the loss.[149] Thus, the insurance policy in question was reformed to match the standard policy and the innocent coinsured spouse was allowed to recover.[150]

In subsequent years, a number of other courts adopted this method of analyzing the problem of the innocent coinsured spouse.[151] Such was the

undertaken the same type of statutory analysis with respect to exclusions for concealment or fraud by a coinsured. *See, e.g.*, Ponder v. Allstate Ins. Co., 729 F. Supp. 60, 61–62 (E.D. Mich. 1990).

141. *Sager*, 680 N.W.2d at 9; *Osbon*, 632 So. 2d at 1159.

142. *Osbon*, 632 So. 2d at 1160–61.

143. *Id.*

144. *Id.* at 1161.

145. *Id.*; LA. REV. STAT. ANN. § 22:691 (2004).

146. *Osbon*, 632 So. 2d at 1161 (alteration in original) (citing LA. REV. STAT. ANN. § 22:691(B)).

147. *See id.* (holding that it was proper to reform the policy to correspond with the standard policy form).

148. *Id.* at 1159.

149. *Id.* at 1159–60.

150. *Id.* at 1162.

151. *See* Trinity Universal Ins. Co. v. Kirsling, 73 P.3d 102, 107 (Idaho 2003) (holding that the policy in question "provides less coverage than the standard policy in violation of [the state code]"); Watson v. United Servs. Auto. Ass'n, 566 N.W.2d 683,

state of the law when, for the first time in a decade, the Iowa Supreme Court was presented with the opportunity to consider an innocent coinsured spouse case.

This opportunity came in *Sager*, where Robert Sager torched his marital home in response to the news that his wife was leaving him.[152] Farm Bureau Mutual Insurance Company (Farm Bureau) then denied a homeowners' insurance policy claim filed by Robert's wife, Ramona.[153] Ramona filed suit, was denied recovery by the district court,[154] and was then granted recovery by the Iowa Court of Appeals.[155] Thus, "[a] battalion of Beanie Babies ha[d] marched [the] legal question" before the Iowa Supreme Court.[156]

The Sagers' policy contained an intentional loss exclusion barring recovery for "any loss arising out of any act committed . . . (1) [b]y or at the direction of an 'insured' . . . and (2) [w]ith the intent or expectation of causing a loss."[157] The Iowa Supreme Court cited *Vance* and applied the best reasoned rule as set forth therein.[158] After applying a contract analysis, the court found the intentional loss exclusion to be unambiguous and to clearly bar Ramona's claim.[159]

This was not the end of the court's analysis, however.[160] The court addressed Ramona's argument that her policy violated the statutory

691 (Minn. 1997) (holding that an "'intentional loss' provision, insofar as it excludes coverage for innocent co-insured spouses, is at odds with the rights and benefits of the Minnesota standard fire insurance policy"); Volquardson v. Hartford Ins. Co., 647 N.W.2d 599, 610 (Neb. 2002) (holding "that insofar as the policy in question excluded coverage for an innocent coinsured, it conflicted with the standard policy and must be reformed" (citations omitted)); Lane v. Sec. Mut. Ins. Co., 747 N.E.2d 1270, 1271 (N.Y. 2001) (holding that an intentional loss exclusion "impermissibly restricts the coverage mandated by statute and afforded the innocent insured" (citations omitted)); *see also* Traders & Gen. Ins. Co. v. Freeman, 81 F. Supp. 2d 1070, 1074–78 (D. Or. 2000) (applying a similar statutory construction and allowing the innocent coinsured to recover).

152. Sager v. Farm Bureau Mut. Ins. Co., 680 N.W.2d 8, 9 (Iowa 2004); *see supra* notes 12–18 and accompanying text (discussing the facts underlying the suit).

153. *Sager*, 680 N.W.2d at 9.

154. *Id.* at 10 (holding that *Vance* controlled).

155. *Id.* (distinguishing present case from *Vance*).

156. *Id.* at 9.

157. *Id.* (alteration in original) (internal quotation omitted).

158. *Id.* at 11.

159. *Id.* at 12.

160. *Id.*

standard fire insurance policy set forth in Iowa Code section 515.138.[161] Section 515.138 makes it "unlawful for any insurance company to issue any policy of fire insurance . . . different from the standard form of fire insurance policy [therein] set forth."[162] An insurance company may only issue a different policy "if such policy includes provisions with respect to the peril of fire which are the substantial equivalent of the minimum provisions" of the standard policy.[163]

Iowa's standard policy does not include an intentional loss exclusion.[164] While the standard policy does contain exclusions for neglect and the increasing of a hazard by the insured, at the time of the *Sager* decision,[165] these exclusions consistently employed the words "the insured."[166] The court held that the words "the insured" create a several obligation among insureds while the words "an insured" create a joint obligation.[167] To the court this represented "'an obvious substantive difference'"[168] causing the Farm Bureau insurance policy to fail the substantial equivalence requirement contained in Iowa Code section 515.138.[169]

In making this decision, the Iowa Supreme Court rejected the contention that it was overruling *Vance*.[170] Instead, the court stated that it was merely adding a second step to the contractual analysis adopted in *Vance*.[171]

What exactly was this second step to the analysis? Did the court

161. *Id.*; *see also* IOWA CODE § 515.138 (2005).

162. IOWA CODE § 515.138.

163. *Id.*

164. *Id.*; *Sager*, 680 N.W.2d at 12.

165. *Sager*, 680 N.W.2d at 12. After the Iowa Supreme Court's ruling in *Sager*, section 515.138 of the Iowa Code was amended in 2005 by Iowa Senate File 360. 2005 Iowa Legis. Serv. 219–20 (West). Iowa's statutory standard fire insurance policy now consistently employs the policy language "an insured" instead of "the insured." *Id.* It is important to note that the New York model still consistently employs the policy language "the insured." N.Y. INS. LAW § 3404 (McKinney 2000). The consequences of this amendment to the future of innocent coinsured jurisprudence are discussed in Part V.

166. *Sager*, 680 N.W.2d at 12–13 (discussing the Nebraska Supreme Court's decision in *Volquardson v. Hartford Insurance Co.*, 647 N.W.2d 599 (Neb. 2002)).

167. *Id.* at 13.

168. *Id.* at 14 (quoting *Volquardson*, 647 N.W.2d at 609).

169. *Id.*

170. *Id.*

171. *Id.*

engage in statutory construction? A public policy analysis? And ultimately, did the court come to the correct conclusion?

The court commenced this second step of the analysis by characterizing Iowa's standard fire insurance policy as the New York type.[172] Like all New York type standard fire insurance policies, Iowa's standard policy lacks an intentional loss exclusion.[173] The court did not take issue with the fact the Farm Bureau policy contained an intentional loss exclusion; the court ultimately was concerned with whether the intentional loss exclusion was joint as to all insureds.[174] Apparently the court readily recognized that an intentional loss exclusion with a several requirement provides coverage substantially equivalent to that of the standard policy. This is likely because the standard policy contains provisions excluding coverage when the insured has engaged in concealment or fraud and for loss occurring when "the hazard is created or increased by . . . *an insured*."[175] In other words, any recovery excluded by a several-in-nature intentional loss exclusion would also be precluded by the concealment or fraud and increased hazard provisions in the standard policy. The Minnesota Supreme Court explicitly made this conclusion in *Watson v. United Services Automobile Ass'n*.[176]

The court did, however, address Ramona's argument that "when a homeowners policy denies coverage whenever 'an insured' intentionally causes the loss, [that policy] conflicts with statute."[177] Ramona argued that the consistent use of the words "the insured" in the standard policy demonstrates a legislative intent that all exclusions be several in nature and thus applicable to only the culpable insured.[178]

In considering this argument, the court first looked to persuasive authority.[179] Again, the court adopted the holding of other jurisdictions,

172. *Id.* at 12. The policy was "first adopted in the state of New York and has been followed in Iowa and many other states since its original adoption." *Id.* (quotation omitted) (citation omitted).

173. IOWA CODE § 515.138 (2005); *Sager*, 680 N.W.2d at 12.

174. *Sager*, 680 N.W.2d at 12–14.

175. IOWA CODE § 515.138 (emphasis added).

176. Watson v. United Servs. Auto. Ass'n, 566 N.W.2d 683, 691 (Minn. 1997) (stating that "an insurance policy provision, which excluded coverage for the intentional acts . . . 'cover[ed] the same subject matter, fraud on the insurer,' as the concealment or fraud provision of the statutory standard policy" (alteration in original) (quoting Borman v. State Farm Fire & Cas. Co., 521 N.W.2d 266, 269 (Mich. 1994))).

177. *Sager*, 680 N.W.2d at 13; *see also* IOWA CODE § 515.138.

178. *Sager*, 680 N.W.2d at 13.

179. *Id.* ("When interpreting our standard fire insurance policy, we look to the

finding that the words "the insured" create a several obligation.[180] In doing so, the court may have overlooked a few important sources of mandatory authority. Some of this mandatory authority suggests the language of Iowa's standard policy may allow fire insurance companies to contract for a joint obligation among coinsureds.

For example, Iowa Code section 4.1 contains a list of forty rules of statutory construction.[181] The seventeenth enumerated rule on that list requires that "[u]nless otherwise specifically provided by law the singular includes the plural, and the plural includes the singular."[182] Applying this rule to the statutory standard fire insurance policy, the words "the insured" could include the words "an insured." If this is the case, the standard policy allows joint obligations among insureds in a contract of insurance. While it is not apparent from the *Sager* opinion whether Farm Bureau advanced this argument, it still would seem reasonable for the court to have considered all possibly relevant Iowa law before considering the law of other jurisdictions.

Before looking to authority from other jurisdictions, the court also could have considered a number of other indicia of legislative intent. Indeed, when construing legislative intent, the Iowa Supreme Court has stated that "[o]ther rules of statutory construction *require* us to consider legislative history and the consequences of a particular construction."[183] Iowa Code section 4.6 enumerates these and other tools appropriate for discerning legislative intent.[184]

The fact that the court did not explicitly consider legislative history is understandable as there appears to be no Iowa legislative history explaining the purpose of Iowa Code section 515.138, which was passed in 1947.[185] Legislative history may have been useful in confirming or denying possible explanations for the lack of an intentional loss exclusion in Iowa's standard policy. The legislature could have purposefully declined to include an intentional loss exclusion in order to allow innocent coinsured spouses to recover. Alternately, the legislature simply may not have considered such an exclusion. The lack of legislative history makes it

decisions of other jurisdictions with a similar policy." (citation omitted)).

180. *Id.*

181. IOWA CODE § 4.1.

182. *Id.* § 4.1(17).

183. *In re* Marriage of Hutchinson, 588 N.W.2d 442, 448 (Iowa 1999) (emphasis added) (citing IOWA CODE §§ 4.6(3), (5)).

184. IOWA CODE § 4.6.

185. *Id.* § 515.138; 1947 Iowa Acts 356–62.

difficult to prove or disprove either of these two scenarios.

A third plausible motive for the failure to include an intentional loss exclusion can be explained by considering the common law at the time the statutory standard policy was enacted. This is one of the considerations enumerated in Iowa Code section 4.6.[186] New York adopted a standard fire insurance policy in 1943,[187] and soon after Iowa adopted a similar policy.[188] As discussed above, early innocent coinsured jurisprudence was not favorable to the innocent coinsured spouse.[189] Before New York and Iowa adopted standard fire insurance policies, the common law in most jurisdictions did not allow an innocent coinsured to recover.[190] Thus, it is possible the New York and Iowa legislatures neglected inserting an intentional loss exclusion and joint language on the assumption the common law would prevail.

Because this analysis does not conclusively reveal the Iowa legislature's intent, the court could have looked to Iowa Code section 4.6, which provides yet another mechanism for discerning legislative intent.[191] Courts may also consider "[t]he consequences of a particular construction."[192] The court "will seek a construction consistent with a sense of justice if possible, and will presume such to have been the intent of the Legislature."[193] The Iowa Supreme Court characterized its analysis as consisting of two parts; one part contract analysis and one part statutory analysis.[194] It appears the court did not engage in any consideration of the consequences of the two possible constructions.

If Iowa Code section 515.138 were to be construed to allow contracts

186. IOWA CODE § 4.6(4).

187. Volquardson v. Hartford Ins. Co., 647 N.W.2d 599, 608 (Neb. 2002).

188. Sager v. Farm Bureau Mut. Ins. Co., 680 N.W.2d 8, 12 (Iowa 2004) (citing Olson Enters., Inc. v. Citizens Ins. Co., 121 N.W.2d 510, 512 (Iowa 1963)); 1947 Iowa Acts 356–62.

189. *See supra* text accompanying notes 27–31.

190. *See, e.g.*, Kosior v. Cont'l Ins. Co., 13 N.E.2d 423, 425 (Mass. 1938) (finding no recovery allowed for an innocent coinsured); Monaghan v. Agric. Fire Ins. Co., 18 N.W. 797, 804 (Mich. 1884) (same); Matyuf v. Phoenix Ins. Co., 27 Pa. D. & C.2d 351, 366 (1933) (same); Bellman v. Home Ins. Co., 189 N.W. 1028, 1028 (Wis. 1922), *overruled by* Hedtcke v. Sentry Ins. Co., 326 N.W.2d 727 (Wis. 1982) (same). *But see* Hoyt v. N.H. Fire Ins. Co., 29 A.2d 121, 122–23 (N.H. 1942) (allowing recovery for an innocent coinsured spouse).

191. IOWA CODE § 4.6.

192. *Id.* § 4.6(5).

193. State v. Gish, 150 N.W. 37, 40 (Iowa 1914).

194. Sager v. Farm Bureau Mut. Ins. Co., 680 N.W.2d 8, 13–14 (Iowa 2004).

of fire insurance to contain joint obligation among insureds, then Ramona, an innocent coinsured spouse, could not recover.[195] In *Vance*, the court seemed unconcerned with the prospect of barring an innocent coinsured from recovery due to the misconduct of a coinsured, as long as that outcome was unambiguously contracted for.[196] That is, refusing recovery to an innocent coinsured did not seem to be per se inconsistent with a sense of justice. By analogy, a construction of Iowa Code section 515.138 as allowing joint obligations among insureds would not be unjust, requiring a presumption against that construction. On the other hand, it cannot be said allowing an innocent coinsured to recover is unjust per se.

Thus, even after exhausting all applicable options for determining the intention of the legislature provided by Iowa Code section 4.6, it seems no conclusive legislative intent can be determined. This would seem a more appropriate point for the court to have looked to other jurisdictions for guidance in construing an Iowa statute. While it is true the court may have undertaken this analysis and deemed it unworthy of reproduction in its opinion, this does not appear to be the case. Again, the court began its analysis by stating, "[w]hen interpreting our standard fire insurance policy, we look to the decisions of other jurisdictions with a similar policy."[197]

Despite the fact the *Sager* court may have jumped the gun by relying on persuasive authority, the ultimate result obtained seems to be the correct one.[198] The court did follow the clear trend in innocent coinsured jurisprudence.[199] There also seems to be no overriding public policy concern requiring refusal of recovery for an innocent coinsured.

While the *Sager* court avoided public policy analysis, a number of other courts have not been so shy.[200] As the court in *Volquardson v.*

195. *See id.* at 11–12 (holding that "under the express terms of such a policy, if any insured sets fire to the house, all insureds are barred from recovering").

196. Vance v. Pekin Ins. Co., 457 N.W.2d 589, 592–93 (Iowa 1990). It is important to note the Iowa Supreme Court explicitly stated *Vance* was not being overruled. *Sager*, 680 N.W.2d at 14. Thus, all of the analysis in *Vance* is still good law.

197. *Sager*, 680 N.W.2d at 13 (citation omitted).

198. The court's failure to consider the relative public policy concerns will be more important with regards to extent of recovery. This will be discussed in Part VI.

199. *See, e.g.*, Trinity Universal Ins. Co. v. Kirsling, 73 P.3d 102, 107 (Idaho 2003) (allowing recovery for an innocent coinsured because the insurance policy conflicted with the standard statutory policy); Watson v. United Servs. Auto. Ass'n, 566 N.W.2d 683, 691 (Minn. 1997) (same); Volquardson v. Hartford Ins. Co., 647 N.W.2d 599, 610 (Neb. 2002) (same); Lane v. Sec. Mut. Ins. Co., 747 N.E.2d 1270, 1271 (N.Y. 2001) (same).

200. *See, e.g.*, *Volquardson*, 647 N.W.2d at 607 (holding "there is no public

Hartford Insurance Co.[201] stated, "'[p]ublic policy' is that principal of the law which holds that no subject can lawfully do that which has a tendency to be injurious to the public or against the public good."[202] In considering the problem of the innocent coinsured spouse, the desire to avoid imputing liability to an innocent party competes with the desire to avoid potentially benefiting the wrongdoer.[203] The result in *Sager* assures liability will not be imputed to an innocent party.[204] Such a result also prevents the insurance company from being unjustly enriched.[205] However, the *Sager* opinion does little to guard against an arsonist benefiting from insurance fraud. For example, one spouse could torch coinsured property and, under *Sager*, the innocent coinsured spouse could recover.[206] If the couple does not divorce due to the arsonist's shenanigans, the guilty spouse certainly will benefit from any recovery by the innocent coinsured spouse.

Ideally, the solution to this problem would be a legislative one. For instance, the Missouri legislature enacted section 375.1312(5).[207] That code section requires an innocent coinsured spouse to file a police report and to cooperate in any resulting criminal prosecution.[208] In the absence of such legislative guidance and in the interest of reducing arson-for-profit, the Iowa Supreme Court should have seized the first opportunity to address the problem. If the court had undertaken a more thorough analysis of legislative intent and public policy considerations, it may have recognized this fact.

One solution would be to allow the innocent coinsured to recover only if the couple was subsequently divorced or a divorce was being sought by the innocent coinsured spouse. As the court in *Watts v. Farmers Insurance Exchange*[209] has recognized, however, such a rule may solve the

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policy specifically articulated by Nebraska statutes or case law which would preclude application of the intentional acts exclusion").

201. Volquardson v. Hartford Ins. Co., 647 N.W.2d 599 (Neb. 2002).

202. *Id.* at 607 (citation omitted).

203. Vance v. Pekin Ins. Co., 457 N.W.2d 589, 590 (Iowa 1990).

204. *See* Watts v. Farmers Ins. Exch., 120 Cal. Rptr. 2d 694, 702 (Ct. App. 2002) (recognizing "[t]he modern rule benefits the public good by not punishing the innocent victim for the wrongs of another" (internal quotation omitted)).

205. *Id.* at 703 n.12 (stating "[u]njust enrichment occurs because the insurance company retains the premiums paid over the years, yet is relieved of its obligation to pay for the loss").

206. Sager v. Farm Bureau Mut. Ins. Co., 680 N.W.2d 8, 14 (Iowa 2004).

207. MO. ANN. STAT. § 375.1312(5) (West 2002).

208. *Id.*

209. Watts v. Farmers Ins. Exch., 120 Cal. Rptr. 2d 694 (Ct. App. 2002).

problem but "could encourage married couples to divorce."[210] Alternately, a case-by-case analysis could be undertaken to see if the arsonist spouse will benefit from recovery.[211] Another option could include a shifting of burdens. Once the insurer has proven malfeasance by one insured, the burden could shift to the other insured to prove her innocence. Such an analysis has been adopted by at least one state supreme court,[212] and would advance the public interest that a guilty party not be allowed to benefit from that party's misdeeds.

VI. THE AFTERMATH OF *SAGER V. FARM BUREAU*

A recent amendment to section 155.138 of the Iowa Code further complicates the analysis regarding the issue of recovery for an innocent coinsured spouse. The Iowa General Assembly revised Iowa's statutory standard fire insurance policy to consistently employ the policy language "an insured" in place of "the insured."[213] As is true with the original 1947 version, there is no legislative history to provide insight into legislative intent.[214] Looking to the various indicia of legislative intent provided by Iowa Code section 4.6 proves just as fruitless.[215] Consideration of the revision in light of the current common law (i.e., as in response to *Sager*) suggests the legislature intended to allow insurance companies again to contract for joint obligations among its insureds. The bill containing the revisions passed with little debate and by such wide margins,[216] however, that it is difficult to believe the legislators knew or intended the bill would have such an effect.

While there may be no definitive answer as to what the Iowa General Assembly intended in either the 1947 or 2005 version of the standard fire code, one thing is for sure: the Iowa Supreme Court will have to deal with the problem of the innocent coinsured again. Obviously, the court will have to interpret how the 2005 changes to Iowa Code section 515.138 affect

210. *Id.* at 703 (citing Tex. Farmers Ins. Co. v. Murphy, 996 S.W.2d 873, 877 (Tex. 1999)).

211. This type of analysis was suggested in *Erlin-Lawler Enterprises, Inc. v. Fire Insurance Exchange*, 73 Cal. Rptr. 182, 185 (Ct. App. 1968).

212. Richards v. Hanover Ins. Co., 299 S.E.2d 561, 564 (Ga. 1983).

213. *Compare* IOWA CODE § 515.138 (2005), *with* 2005 Iowa Legis. Serv. 219–20 (West).

214. *See supra* note 185 and accompanying text.

215. *See supra* notes 183–84 and accompanying text.

216. The Iowa Senate passed the bill 50-0, SENATE JOURNAL, 81st Gen. Assembly, at 727–28 (2005), while the Iowa House of Representatives passed it 98-1, HOUSE JOURNAL, 81st Gen. Assembly, at 1325–26 (2005).

innocent coinsureds. For losses arising prior to the 2005 revision of Iowa Code section 515.138, the court's opinion in *Sager* left a number of questions unanswered.[217] Analysis of these questions is also very relevant to those states that continue to employ New York type standard fire insurance policies which still refer to "the insured."

For example, now that the court has held that an innocent coinsured spouse can recover under the typical New York type policy, the next logical question that will have to be addressed is: to what extent can the innocent coinsured spouse recover? The court refused to answer this question in *Sager* because the case was being remanded for factual findings and legal consideration regarding possible concealment or fraud by Ramona.[218] Thus, it was not known whether Ramona would indeed be entitled to recovery.[219] As such, the court characterized a ruling on the issue as "too speculative" at that time.[220]

As outlined above, *Sager* was only the fourth time the Iowa Supreme Court had the opportunity to decide an innocent coinsured spouse case.[221] In two of the prior cases, the court found the innocent spouse was not entitled to recover and thus never reached the extent of recovery question.[222] In *Jensen*, the innocent coinsured was entitled to recover, but the court did not explicitly state to what extent recovery could be had.[223]

While there is an absence of direction from the Iowa Supreme Court, other jurisdictions provide a good deal of persuasive authority on the matter. Of the cases cited in *Sager*, *Watts* offers the most guidance.[224] As in

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217. Sager v. Farm Bureau Mut. Ins. Co., 680 N.W.2d 8, 15 (Iowa 2004) (refusing to answer the extent of recovery question).

218. *Id.*

219. *Id.*

220. *Id.*

221. *See* Vance v. Pekin Ins. Co., 457 N.W.2d 589 (Iowa 1990) (representing the Iowa Supreme Court's first opportunity to rule on an innocent coinsured case); Webb v. Am. Family Mut. Ins. Co., 493 N.W.2d 808 (Iowa 1992) (representing the Iowa Supreme Court's second opportunity to rule on an innocent coinsured case); Jensen v. Jefferson County Mut. Ins. Ass'n., 510 N.W.2d 870 (Iowa 1994) (representing the Iowa Supreme Court's third opportunity to rule on an innocent coinsured case).

222. *See Webb*, 493 N.W.2d at 812–13 (applying *Vance*, refusing coverage and never reaching the extent of recovery question); *Vance*, 457 N.W.2d at 593 (refusing to address the extent of recovery question after denying the innocent spouse coverage).

223. *Jensen*, 510 N.W.2d at 872 (stating merely that "[p]laintiff Jensen is therefore entitled to recover under the policy").

224. Watts v. Farmers Ins. Exch., 120 Cal. Rptr. 2d 694, 695 (Ct. App. 2002) (indicating that the case was about "whether an innocent co-insured who holds property jointly with an insured who has committed fraud is automatically excluded

Sager, the court in *Watts* remanded the case for factual findings regarding certain inconsistencies during the claim process.[225] The *Watts* court, however, provided direction for the lower court as to the extent of recovery question.[226] If he was indeed innocent, the coinsured spouse was entitled to recover his one-half interest in the insured property.[227] The court concluded by quoting the language in *Texas Farmers Insurance Co. v. Murphy*:[228] "'we reaffirm our longstanding public policy preventing an arsonist from benefitting from fraud by denying recovery of his or her own one-half interest in the claim against the insurer.'"[229] On the other hand, "'such public policy does not overcome an innocent spouse's contractual right to recover her or his one-half interest in the policy benefits.'"[230] This language seems to indicate the innocent spouse's recovery will be limited to one-half of the policy limits.[231]

The majority of jurisdictions permit recovery for the value of half of the loss, up to the full policy limits.[232] Just as *Howell* led the charge in debasing the old common law rule against recovery for the innocent coinsured spouse, that case also set the trend in extent-of-recovery jurisprudence.[233] The *Howell* court reasoned that if the coinsureds' rights and interests were several under the policy, then recovery should only be had to the extent of the innocent spouse's interest.[234]

Under certain circumstances, a few courts have allowed more than one-half recovery. In *Liggett*, the alleged arsonist-spouse died in the

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from coverage").

225. *Id.* at 707; *Sager*, 680 N.W.2d at 15.

226. *Watts*, 120 Cal. Rptr. 2d at 706 (indicating that "since the Language adopted by the Legislature for the standard form does not specifically state that the act of any insured will be attributed to all insureds, the intent is that . . . an innocent co-insured be able to recover for his or her proportionate share of the damaged property").

227. *Id.* at 707.

228. Tex. Farmers Ins. Co. v. Murphy, 996 S.W.2d 873, 881 (Tex. 1999).

229. *Watts*, 120 Cal. Rptr. 2d at 703 (quoting *Murphy*, 996. S.W.2d at 881).

230. *Id.* (quoting *Murphy*, 996 S.W.2d at 881).

231. *See* David L. Nersessian, *Penalty by Proxy: Holding the Innocent Policyholder Liable for Fraud by Coinsureds, Claims Professionals, and Otehr* [sic] *Agents*, 38 TORT TRIAL & INS. PRAC. L.J. 907, 929–30 (2003) (citations omitted).

232. *See* Lewis v. Homeowners Ins. Co., 432 N.W.2d 334, 336 (Mich. Ct. App. 1998) (citations omitted).

233. Howell v. Ohio Cas. Ins. Co., 307 A.2d 142, 145 (N.J. Super. Ct. Law Div. 1973).

234. *Id.* ("Since the interest is several, recovery should be had to the extent of the wife's interest." (citing Hoyt v. N.H. Fire Ins. Co., 29 A.2d 121 (N.H. 1942))).

conflagration.[235] The court noted the basic principle that implied exceptions exist between the parties which would allow for recovery in order to achieve one of the following objectives: to prevent an arsonist-spouse from profiting from the wrongdoing; to deter crime; to avoid fraud against insurers; and to maintain coverage "'consistent with the reasonable expectations of the contracting parties.'"[236] The court held, because the alleged arsonist was deceased, granting the innocent spouse full recovery would not hinder any of the policy objectives.[237] In addition, the court held that "[w]here there is some prospect that the guilty party might benefit, even indirectly, a careful factual analysis can be made by the trial court to determine whether that prospect exists and to protect against it."[238]

The Court of Appeals of Michigan also has employed something of a factual analysis in determining the extent to which an innocent coinsured spouse may recover.[239] The court stated that "under most circumstances [the majority rule yields] the correct and equitable result."[240] The court also cited *Liggett*, however, and held that there may exist "circumstances under which equity would demand that the innocent insured spouse be allowed to collect one hundred percent of the proceeds."[241] Thus, the Michigan court remanded the case to the trial court to determine whether compelling equities existed allowing the coinsured to recover more than one-half of the total damage within the policy limits.[242]

Those decisions undertaking a case-by-case analysis seem the most enlightened. They take into consideration public policy concerns and allow for fair results. If there is no danger a malfeasant spouse will benefit from his wrongdoing, the innocent coinsured spouse should be allowed to recover up to the policy limits. This would certainly conform to coinsureds' reasonable expectations and would avoid unjustly enriching insurance companies. On the other hand, any rule should allow the court to ensure the guilty coinsured will not benefit. This is where a burden shifting requirement and statutes like Missouri's[243] are useful. Such safeguards

235. Am. Econ. Ins. Co. v. Liggett, 426 N.E.2d 136, 139 (Ind. Ct. App. 1981).
236. *Id.* at 141 (quoting ROBERT E. KEETON, INSURANCE LAW § 5.3(a) (1971)).
237. *Id.* at 144.
238. *Id.* at 140 (citations omitted).
239. Ramon v. Farm Bureau Ins. Co., 457 N.W.2d 90, 94 (Mich. Ct. App. 1990).
240. *Id.*
241. *Id.* (citing *Liggett*, 426 N.E.2d 136).
242. *Id.* at 95–96.
243. MO. ANN. STAT. § 375.1312(5) (West 2002).

ensure an innocent spouse is truly innocent and that a guilty coinsured does not benefit from any wrongdoing.

VII. CONCLUSION

The problem of the innocent coinsured spouse can be fully understood only by analyzing the problem in a number of ways. An understanding of the common factual scenario in which the problem of the innocent coinsured spouse arises gives the analyst a proper foundation upon which to build full understanding.[244] Familiarity with the manner in which courts have historically dealt with the problem is another important building block.[245] More important, however, is an understanding of how the modern trend involving states' standard fire policies has acted as a trump card in innocent coinsured jurisprudence.[246] In Iowa, *Sager* is of obvious precedential importance on this point, while it is also highly representative of a national trend in innocent coinsured jurisprudence.[247] Finally, the issue can only be fully understood if certain questions left unanswered by the Iowa Supreme Court are considered.[248] Only by considering each of these important facets of innocent coinsured jurisprudence can one fully appreciate the nature of the problem and how it has been and should be dealt with.

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244. *See* discussion *supra* Part I.
245. *See* discussion *supra* Parts II–III.
246. *See* discussion *supra* Part IV.
247. *See* discussion *supra* Parts IV–V.
248. *See* discussion *supra* Part VI.

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