

## Wisconsin Supreme Court Addresses "Occurrence" in Case involving Insured's Reckless Homicide Conviction

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### ***Dostal v. Strand***, 2023 WI 6

In *Dostal*, Dostal filed suit against Strand for negligence and wrongful death arising out of the death of their infant daughter, Haeven, who died due to head trauma sustained while in Strand's care. Strand sought defense and indemnification from his homeowner's insurer, State Farm. The circuit court and court of appeals determined that Strand's conduct did not constitute an "occurrence" under the State Farm policy because his conviction for second-degree reckless homicide established the death was not the result of an "accident."

Dostal petitioned for review to the Wisconsin Supreme Court. The Supreme Court reviewed the issue of whether Strand's conduct constituted an "occurrence," as well as other issues raised by State Farm before the circuit court, including application of the resident relative and intentional acts exclusions.

The Supreme Court first concluded that issue preclusion did not bar Dostal from seeking insurance coverage for her claims against Strand under the State Farm policy, because the issue of whether Strand's conduct constituted an "accident" was not actually litigated in the prior criminal proceeding. The Supreme Court explained that even though the jury in the criminal proceeding found Strand guilty of second-degree reckless homicide, the jury made no specific finding as to whether Strand's conduct constituted an "accident." The Supreme Court noted that under the common understanding of "accident," even if one engages in reckless conduct, a resulting injury can still be an "accident" within the meaning of a policy that requires an "occurrence" to trigger coverage.

Turning to the exclusions, the Supreme Court determined that the policy's resident relative exclusion did not apply because the inquiry is fact-intensive and it was a disputed issue of material fact as to whether Haeven was a "resident" of Strand's household. The Supreme Court also concluded the policy's intentional acts exclusion did not apply because there were genuine issues of material fact regarding whether Strand's conduct was "intentional." The Supreme Court reasoned that the criminal case jury's determination that Strand's conduct was reckless did not preclude a finding that his conduct was an accident for purposes of insurance coverage.

The Supreme Court reversed the court of appeals' decision and remanded the case to the circuit court.

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