Sex, Stabbing, and Estoppel: A Criminal Plea Prevents Tort Liability Coverage under Homeowners Insurance

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Sex, Stabbing, and Estoppel:
A Criminal Plea Prevents
Tort Liability Coverage
Under Homeowners Insurance

James v. Paul

I. INTRODUCTION

It is not every day that one wants to sit on the same side of the legal fence as the man who stabbed him. If such strained camaraderie is necessary to collect payment for the injuries inflicted, however, one may consider assuming such a bizarre position. This Note discusses such a situation where an assailant and his victim found themselves on the “same side” in the victim’s quest to collect under the stabber’s homeowners insurance policy. The results of this case yield some definitive rules on when Missouri courts will apply the doctrine of collateral estoppel to prevent tort liability insurance coverage for an insured’s intentional acts. This Note analyzes the effect underpleading—a tort plaintiff’s choice to plead and prove negligence, rather than an intentional tort—has on insurers’ duty to defend insureds for intentional acts.

II. FACTS AND HOLDING

On the evening of June 8, 1989, Robert Paul (“Paul”), suspicious that his estranged wife was having an affair, went to her home after “having consumed a considerable amount of beer.” 2 Once at the home, Paul looked through the living room window and witnessed his wife’s infidelity. 3 Through the window, Paul saw his wife engaging in sexual relations with Danny James (“James”). 4 Enraged, Paul attempted to enter the home by breaking down the front door. 5 Unable to do so, Paul broke the living room window, but he was injured in the

1. 49 S.W.3d 678 (Mo. 2001).
2. Id. at 680. Paul and his wife, Kayleen, were to have a hearing on their dissolution of marriage the next day in the Circuit Court of Jackson County, Missouri. Id.
3. Id.
4. Id.
5. Id.
process and, therefore, was unable to enter through that window. He then retrieved a knife from his truck, broke the kitchen window, and entered the house through that window. Paul proceeded to the living room, where he encountered James and stabbed him three times in the abdomen. Both men survived their injuries, and Paul was charged with first-degree assault.

Paul, while represented by counsel at a plea hearing, admitted to stabbing James. Paul pled guilty to the first-degree assault charge on August 8, 1989, and “indicated that he was pleading guilty because he was in fact guilty.” Paul informed the court that he was satisfied with his counsel’s representation, and indicated to both counsel and the court that he understood the constitutional rights he was waiving and the terms and conditions of the plea agreement. “The court found Paul’s plea was made voluntarily and intelligently and that there was a factual basis supporting the assault charge[,]” and it sentenced him to five years in prison. The court suspended Paul’s sentence of five years’ imprisonment and placed him on probation.

James filed a personal injury claim against Paul in the Circuit Court of Jackson County, Missouri, on February 9, 1992. In James’s amended petition, he alleged Paul had been careless and negligent in stabbing him. At the time Paul stabbed James, Paul had a homeowners insurance policy with State Farm Fire and Casualty Company (“State Farm”) that provided personal liability coverage. The personal liability coverage, however, did not cover the insured’s intentional act. Thus, when Paul informed State Farm of the potential claim

6. Id.
7. Id.
8. Id. Kayleen was in the kitchen when Paul entered the home; Paul passed by her to go to the living room before he stabbed James. Id. Both James and Paul were taken to the hospital for treatment of their injuries. Id.
9. Id. First-degree assault requires that an actor attempt to kill or knowingly cause or attempt to cause serious physical injury to another. MO. REV. STAT. § 565.050.1 (2000).
10. James, 49 S.W.3d at 680.
11. Id.
12. Id.
13. Id.
14. Id.
15. Id.
16. Id. at 681.
17. Id. James alleged that Paul “inflicted a knife wound upon [him]” while Paul was “incapacitated and unable to control the nature of his conduct.” Id.
18. Id. at 680.
19. Id. at 681. Section II, Coverage L, of the policy provided that State Farm would pay for the damages for which an insured was legally liable and provide a defense
and sought coverage for claims James might assert against him, State Farm sent Paul a letter denying coverage. State Farm declined to defend Paul at trial, and James and Paul entered into a settlement agreement. The settlement agreement "provided Paul would waive a jury trial, not present evidence and pay James $3,500. James agreed to limit any execution to the State Farm policy and further promised that if James was unsuccessful in the garnishment against State Farm, Paul would pay an additional $21,500." The trial court entered judgment for James.

James then "filed a garnishment action against State Farm" to collect on his judgment against Paul, but "State Farm continued to deny coverage." James moved for summary judgment against State Farm in the garnishment proceeding, and the court granted James's motion for summary judgment. In ruling against State Farm's expense for claims or suits brought against an insured for bodily injury "caused by an occurrence." Id. at 680-81. Occurrence was defined in the policy as: "[A]n accident . . . which results in . . . bodily injury . . . during the policy period." Id. at 681. Section II expressly excluded from the liability coverage any bodily injury or property damage that the insured expected or intended, or such harm to any person or property that resulted from the insured's "willful or malicious acts." Id.

20. Id. The letter sent to Paul by State Farm explained "that the incident was not an occurrence as defined in the policy and that it also triggered the exclusion provisions of the policy." Id.

21. Id.

22. Id.

23. Id. Paul did not appear at trial. Id. The trial court "entered judgment for James in the amount of $285,000, prejudgment interest of $45,886.31, and costs." Id. The court's judgment entry stated the following:

1. On June 8, 1989, [Paul] suffered from the medical conditions of alcoholism, adjustment disorder with depression, anxiety and obsessive disorder with the result of diminished mental capacity.
2. On June 8, 1989, [Paul] sustained physical injuries and was intoxicated, which, together with is [sic] medical disorders then affecting him, caused him to be in shock, and rendered [him] unable to control or appraise the nature of his conduct.
3. The violent events of June 8, 1989, during which [James] was injured were the result of sudden disinhibition and loss of control resulting from a combination of fragile borderline personality structure, acute adjustment reaction to emotional distress and intoxication with alcohol.
4. At the time . . . [Paul] was not capable of appreciating or comprehending the nature or consequences of his conduct. [Paul] did not intend or expect for [James] to be injured.

Id.

24. Id.

25. Id. Both parties initially filed motions for summary judgment, which the court denied. Id. Subsequently, each filed a renewed motion for summary judgment, and the
State Farm, the court held that "the issue of coverage was resolved in the underlying tort action." The court held that State Farm "had a duty to defend Paul in the tort action, and its failure to do so . . . waive[d] State Farm's] coverage defense in the garnishment action, based on] the doctrine of 'estoppel in pais.'" The trial court also held that State Farm was prevented from "relitigating an issue it could have raised before in the initial personal injury action." State Farm appealed to the Missouri Court of Appeals for the Western District of Missouri, arguing that neither equitable estoppel nor collateral estoppel barred State Farm from litigating coverage in the garnishment action. State Farm also asserted that Paul's guilty plea in the criminal case entitled it to summary judgment in the garnishment proceeding. The appellate court reversed, and the case was remanded to "set aside the summary judgment in favor of the garnishor and enter judgment for State Farm."

The Missouri Supreme Court affirmed the Western District's judgment. The court held that the trial court did not give "due regard to the preclusive effect of the prior criminal judgment" against Paul, and, therefore, erred in granting summary judgment in favor of James in the garnishment action. The court found that the prior "criminal conviction foreclosed Paul and any party claiming through him from asserting that his conduct was not intentional." According to the Missouri Supreme Court, the trial court erred in deciding that "equitable and collateral estoppel precluded State Farm from asserting its coverage

court denied State Farm's motion and sustained James's motion. Id.

26. Id.

27. Id. at 681-82. Estoppel in pais is also known as equitable estoppel. Equitable estoppel is "[a] defensive doctrine preventing one party from taking unfair advantage of another when, through false language or conduct, the person to be estopped has induced another person to act in a certain way, with the result that the other person has been injured in some way." BLACK'S LAW DICTIONARY 571 (7th ed. 1999).

28. James, 49 S.W.3d at 682. "[T]he trial court held that the 'law of the case doctrine' served to prevent State Farm from relitigating an issue it could have raised before in the initial personal injury action." Id. Because the "law of the case doctrine is a principle applicable to cases where there has been a prior appeal involving the same issues and facts," the Missouri Supreme Court presumed the trial court was referring to the doctrine of collateral estoppel. Id. at 682 n.1.

29. Id. at 682.

30. Id.


32. James, 49 S.W.3d at 689.

33. Id.

34. Id.
exclusion." The cause was remanded to the Circuit Court of Jackson County, Missouri "for entry of judgment in favor of State Farm."

III. LEGAL BACKGROUND

A. Insurance Law Analysis

Consumers purchase insurance both to provide them with coverage for any damages or judgments they may be required to pay and to shield them from any defense costs they might incur as a result of such judgments. This second expectation, that insurers will defend insureds in the event of litigation, often raises questions about an insurance company's "duty to defend." In determining its duty to defend, an insurer reviews the allegations of the complaint made against its insured to determine if it has a duty to defend the insured in the matter. Under Missouri law, the insurer first must compare the allegations in the petition with the terms of its policy and then determine if there is a potential that the claim could be covered by the policy. If the complaint alleges acts or facts that the insured's policy with the insurer may cover, and thus obligate the insurer to pay, the insurer is bound to defend the insured. So long as there is "potentiality of coverage," the insurer has the duty to defend, even if the allegations in the suit are false or groundless.

In some instances, however, the insurer is not required to defend the insured. For example, the insurer may not be expected to provide coverage for the insured if doing so would violate public policy. As in the instant case, an insured's intentional wrongs or criminal acts are often excluded from coverage.

35. Id.
36. Id.
38. See id.
39. Id. § 4.1, at 237.
42. 1 WINDT, supra note 37, § 4.1, at 237.
43. See Zipkin v. Freeman, 436 S.W.2d 753, 761 (Mo. 1968); see also Aetna Cas. & Sur. Co., 390 F.2d at 153.
44. 1 WINDT, supra note 37, § 4.1, at 241.
45. 1 WINDT, supra note 37, § 4.1, at 242.

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because such coverage would violate public policy. The courts in a number of states, including Missouri, hold that insurance coverage for intentional wrongdoing violates public policy because it protects the insured from the economic consequences of his or her intentional acts. In *Easley v. American Family Mutual Insurance Co.*, the Missouri Court of Appeals for the Western District of Missouri held that to permit an insured coverage for his or her "wanton, reckless, or willful acts" would allow the insured wrongly to escape the consequences of his or her intentional act and, therefore, would be contrary to public policy. "In theory, if an insurer pays for intentional acts, then the insured is not held to account for his or her misconduct and, as a result, has no incentive to control his or her behavior in the absence of a deterrence that would have imposed financial responsibility." Thus, courts and insurers have long agreed that it is appropriate for insurers to refuse coverage for their insureds' intentional acts, and standard insurance liability policies do not provide coverage for harms insureds intentionally cause.

To determine whether an exclusion for intentional acts applies to an insured's conduct, an insurer must determine if the insured "expected or intended" the injuries or harm that occurred. Missouri courts follow the majority rule that an insured acted intentionally if he or she acted despite knowing that the consequences of the action were "substantially certain to result" or that the act was of a type that ordinarily would cause harm. Even

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46. 1 Windt, supra note 37, § 4.1, at 242.
47. See 1 Windt, supra note 37, § 4.1, at 242.
49. Id. at 812.
51. Id. at 23-24; see also Steven W. Pottier & Robert C. Witt, *Demand for Liability Insurance: An Insurance Economics Perspective*, 72 Tex. L. Rev. 1681, 1686-88 (1994).
52. Beh, supra note 50, at 1.
55. Id. § 11.9, at 405-06 n.13; see, e.g., Aetna Cas. & Sur. Co. v. Bollig, 878 S.W.2d 837, 839 (Mo. Ct. App. 1994) (stating that "one is presumed to intend the probable consequences of his acts").
where an insured "expected or intended" the act or harm, the court may
determine that the insured’s age or mental competency “negate[s] the requisite
subjective intent." In many states, however, mental competency is not at issue
when the insured acts while voluntarily intoxicated, because voluntary
intoxication is irrelevant as to the insured’s intent as it involves a voluntary act.

As the James case illustrates, the exclusion of coverage for intentional acts
is especially important in civil suits brought against insureds by the victims of
their intentional or criminal acts. Because insurers are not expected to defend
or indemnify insureds where it is clear the insureds’ conduct was intentional or
criminal, plaintiff-victims may seek to “underplead” the nature of their claims
against insured defendants to force insurers into the courtroom. Underpleading
refers to situations in which a party who was intentionally wronged or injured
by an insured will seek to trigger the insured’s insurer’s duty to indemnify so
that recovery is possible, by pleading that he or she was negligently wronged by
the insured rather than by pleading that he or she was intentionally wronged by
the insured.

“[P]laintiffs have a financial incentive to characterize [injuries] as negligent
rather than intentional” because, in most jurisdictions, an insurer’s duty to
defend is triggered as soon as there is an allegation in the complaint that creates
a potential for coverage. Missouri courts, like the majority of jurisdictions,
hold that the insurer must examine the allegations of the complaint to determine
the potential liability created by the suit. This potentiality standard causes the
insurer to defend complaints even when they arise from intentional conduct
because, where the facts alleged might be used in an amended petition to seek

56. See 2 WINDT, supra note 54, § 11.9, at 397-98.
57. 2 WINDT, supra note 54, § 11.9, at 399-400.
58. See Pryor, supra note 53, at 1722-23.
59. Underpleading is also referred to as “underlitigating.” Pryor, supra note 53,
at 1723, 1754.
60. See Pryor, supra note 53, at 1721-28.
61. See 1 WINDT, supra note 37, § 4.1, at 246. In the case discussed by Professor
Windt, the plaintiff alleged both negligence and intentional wrongdoing by the
defendant. The court held that “[a]lthough [plaintiff’s] amended complaint alleged
‘negligence,’ ... the complaint is a transparent attempt to trigger insurance coverage by
characterizing ... tortious conduct under the guise of ‘negligent’ activity” and that the
plaintiff was actually trying to recover for the insured’s intentional acts. Id.; see also
63. Pryor, supra note 53, at 1730.
64. 1 WINDT, supra note 37, § 4.1, at 246-50, 255.
65. See generally 1 WINDT, supra note 37, § 4.2, at 272-80.
damages for negligence, the "potentiality of a judgement" arises and triggers the insurer's duty to defend.\textsuperscript{66}

The duty to defend, however, can be appropriately denied where the insurer correctly predicts that the court will not allow the facts alleged in the petition to result in a judgment against the insured requiring coverage by the insurer.\textsuperscript{67} An insured, or a party claiming through an insured, has the burden of proving that the alleged facts or actions in the claim fall within the insured's coverage.\textsuperscript{68} The insurer, on the other hand, must present evidence to show that the claim falls within an exclusion to the insured's policy.\textsuperscript{69} Under Missouri law, before it can deny its duty to defend or indemnify, the insurer must show that the insured intentionally caused the alleged harm.\textsuperscript{70} However, "[w]hen there is doubt as to the existence of the duty to defend," courts often resolve the matter in the insured's favor.\textsuperscript{71}

\textbf{B. Collateral Estoppel Analysis}

When an insurer refuses to defend its insured because it believes the insured's conduct falls under the policy exclusion for intentional acts, the insurer risks that the plaintiff will prevail on the underpleaded complaint and then seek recovery from insurance funds.\textsuperscript{72} In these instances, the plaintiff will assert the doctrine of collateral estoppel\textsuperscript{73} to preclude the insurer from claiming that acts judged to be negligent were, in fact, intentional and, therefore, not subject to indemnity.\textsuperscript{74}

Generally, once a final judgment is granted against an insured, the insurer is not allowed to "reopen the factual or legal basis of the judgment" when the insured seeks coverage for the judgment.\textsuperscript{75} In general, this rule applies the doctrine of collateral estoppel to the insurer where the insurer had a fair

\begin{itemize}
\item \textsuperscript{66} 1 WINDT, \textit{supra} note 37, § 4.2, at 272-80.
\item \textsuperscript{67} 1 WINDT, \textit{supra} note 37, § 4.1, at 237-41.
\item \textsuperscript{68} 1 WINDT, \textit{supra} note 37, § 4.1, at 265.
\item \textsuperscript{69} 1 WINDT, \textit{supra} note 37, § 4.1, at 265.
\item \textsuperscript{70} See Home Indem. Co. v. Politte, 602 S.W.2d 943, 946-47 (Mo. Ct. App. 1980).
\item \textsuperscript{71} 1 WINDT, \textit{supra} note 37, § 4.2, at 265.
\item \textsuperscript{72} See generally Pryor, \textit{supra} note 53, at 1754-63.
\item \textsuperscript{73} Collateral estoppel is "[a]n affirmative defense barring a party from relitigating an issue determined against that party in an earlier action, even if the second action differs significantly from the first one. [It is a]lso termed \textit{issue preclusion; issue estoppel}." \textit{BLACK'S LAW DICTIONARY} 256 (7th ed. 1999).
\item \textsuperscript{74} Pryor, \textit{supra} note 53, at 1759-63.
\item \textsuperscript{75} 1 WINDT, \textit{supra} note 37, § 4.2, at 270.
\end{itemize}
opportunity to litigate the issue or control the insured’s defense in the suit. However, as Professor Windt has asserted, “[i]f an insurer justifiably refuses to defend the insured because it correctly determines that there is no coverage, but the court, in subsequently ruling against the insured, erroneously holds that there is coverage, it would be preposterous to conclude that the insurer is bound by that erroneous holding.”

In Oates v. Safeco Insurance Co. of America, the Missouri Supreme Court articulated four factors it considered in determining whether collateral estoppel precludes a party from relitigating an issue. These four factors are: (1) if the “issue decided in the prior adjudication was identical [to] the issue presented in the present action;” (2) if the prior result was a judgment on the merits; (3) if “the party against whom collateral estoppel is asserted was a party or in privity with a party to the prior adjudication;” and (4) if that party “had a full and fair opportunity to litigate the issue in the prior suit.” The court, however, held that it will not apply collateral estoppel “where to do so would be inequitable.”

The first factor of the Oates collateral estoppel test—“whether the issue decided in the prior adjudication” corresponds to the issue in the present action—requires the court to compare the findings of the first adjudication to the issues that arise in the second case. Where the issues in the two cases are identical, use of collateral estoppel will be supported.

Under the second prong of the Oates analysis, a court asks if the outcome a party asserts to estop another party resulted from a judgment on the merits in a prior adjudication. In the context of criminal intent findings, the court considers whether the party was found guilty at a criminal trial or merely pled guilty to determine if there was a prior judgment on the merits. Where there is a guilty plea in the prior case, jurisdictions are split on whether the plea can be used to estop a party in a later case. The recent trend in many states is to allow defensive collateral estoppel in a civil proceeding that follows a plea of

76. See 1 WINDT, supra note 37, § 6.22, at 720 (discussing Aetna Cas. & Sur. Co. v. Hase, 390 F.2d 151, 153 (8th Cir. 1968)).
77. 1 WINDT, supra note 37, § 6.22, at 728.
78. 583 S.W.2d 713 (Mo. 1979) (en banc).
79. Id. at 719; see also James v. Paul, 49 S.W.3d 678, 683 (Mo. 2001).
80. Oates, 583 S.W.2d at 719.
81. James, 49 S.W.3d at 683.
82. Oates, 583 S.W.2d at 719.
83. James, 49 S.W.3d at 683.
84. Id.
85. Oates, 583 S.W.2d at 719; see also James, 49 S.W.3d at 683.
86. James, 49 S.W.3d at 686.
87. Id.
guilty. In a Texas case factually similar to the instant case, for example, the court stated that "numerous cases treat a guilty plea with the same preclusive effect" as a conviction after trial. Missouri courts hold that the "foremost" policy reason for such a rule is that, in Missouri, as in many other states, a criminal defendant must be mentally competent to enter a guilty plea, the plea must be voluntary, and there must be a factual basis for the plea.

The third factor of the court's Oates collateral estoppel analysis—whether or not the parties at issue are in privity—weighs the relationship between the party against whom estoppel is asserted and the party to the prior adjudication. Missouri courts have adopted the view of the Restatement (Second) of Judgments that "specific relationships with a criminal defendant" can "serve the same end as privity," such as the contractual relationship that exists in the instant case where there is "a contractual relationship between a promisee, such as Paul, and a third party beneficiary [of Paul's insurance through State Farm], such as James."

Proper analysis of the fourth factor in the Oates analysis requires a court to determine whether the party against whom estoppel is asserted had a "full and fair opportunity to litigate the issues [on the merits] in the prior suit." The court called this fourth factor a "shorthand description of the analysis required to determine if non-mutual collateral estoppel should be applied." Under Missouri law, the principle of non-mutual collateral estoppel "permits use of a

88. Id.
89. Id. (citing State Farm Fire & Cas. Co. v. Fullerton, 118 F.3d 374 (5th Cir. 1997)).
90. Id. (citing Fullerton, 118 F.3d at 381). In the almost equal number of states that do not give the same preclusive effect to guilty pleas and convictions following trial, the state courts "rely on [Section] 85 of the Restatement (Second) of Judgments, cmt. b . . ." Id. at 686-87. The Missouri Supreme Court held, in the instant case, that "[the Restatement] fails to recognize that . . . a felony plea of guilty requires an evidentiary basis for the plea in which the facts are explored by the parties . . . and a judicial determination is made with respect to the essential elements of the crime." Id. at 687.
91. Oates v. Safeco Ins. Co. of Am., 583 S.W.2d 713, 719 (Mo. 1979); see also James, 49 S.W.3d at 683.
92. James, 49 S.W.3d at 682.
93. Id. (citing RESTATEMENT (SECOND) OF JUDGEMENTS § 85(2)(b) (1980)).
94. Id.
95. See id. at 682-89. The majority uses the Restatement (Second) of Judgments Sections 85(2)(b) and 56(1) for its analysis of privity between James and Paul. Id. at 683-84.
96. Oates, 583 S.W.2d at 719; see also James, 49 S.W.3d at 683.
97. James, 49 S.W.3d at 684.
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prior judgment to preclude relitigation of an issue even though the party asserting collateral estoppel was not a party to the prior case."

Under Missouri law, courts closely will examine a party’s use of non-mutual collateral estoppel to determine if the doctrine is being asserted offensively or defensively. Applied defensively, collateral estoppel allows the defendant to preclude the “plaintiff from relitigating a fact [earlier] decided against the plaintiff . . . that is necessary for the plaintiff to establish and carry his burden of proof.” Offensive collateral estoppel, on the other hand, is an “attempt by a plaintiff to rely on a prior adjudication of an issue to prevent” the defendant’s challenge to a “fact necessary to the plaintiff’s case and on which the plaintiff carries the burden of proof.” Missouri courts distinguish between offensive and defensive collateral estoppel because of the “equitable nature of the doctrine.” In the context of insurance coverage for an insured’s intentional or criminal acts, this equitable concern prompts a court to determine if failure to invoke issue preclusion will allow a party whose conduct was previously shown to be intentional (especially through a criminal conviction or plea) thereafter to assert facts contrary to the showing of intent, and thereby profit from his or her own wrongdoing. Further policy rationales for allowing defensive collateral estoppel include: “cut[ting] short declaratory judgment suits”; “expedit[ing] the adjudication of victims’ suits against an insured who has admitted his responsibility for a criminal act”; and avoiding the “danger of inconsistent judgments.”

IV. INSTANT DECISION

A. The Majority Opinion

In determining that State Farm was entitled to summary judgment in James’s garnishment action, Judge Holstein, writing for the majority, gave much weight to the effect of the doctrine of collateral estoppel as applied by State

98. Id.
99. Id. at 685.
100. Id.
101. Id.
102. Id. at 685-86.
103. Id. at 686.
104. Id. at 687 (quoting State Farm Fire & Cas. Co. v. Fullerton, 118 F.3d 374, 386 (5th Cir. 1997)). Judge Holstein opined that “it is disquieting when a judicial system tolerates the continued incarceration of those defendants and at the same time, awards civil damages based on finding that those defendants did not commit all the elements of the crimes for which they are being punished.” Id. (quoting Fullerton, 118 F.3d at 386-87).
The court agreed with State Farm that Paul’s conviction pursuant to his plea of guilty to stabbing James in the criminal case resolved the question whether the stabbing was intentional or willful. Because the plea established that Paul’s stabbing of James was intentional, the court found that State Farm was justified in arguing that Paul’s conduct was outside of his insurance coverage, thereby relieving State Farm of its duty to defend Paul and its duty to provide coverage for the judgment resulting from the civil case.

In considering whether collateral estoppel would preclude James from relitigating the issue of Paul’s intent in stabbing him, the court relied on the four-factor analysis articulated in Oates. The court again expressed that it would not apply collateral estoppel if doing so would be inequitable to the party against whom it was being asserted.

First, the court considered whether the issue decided in the prior adjudication was identical to the issue presented in the present action. The court found that the issues were identical. The court found that both the civil and criminal cases addressed the question of Paul’s intent, thereby “militating in favor of preclusion.” The court concluded that, when Paul pled guilty to first-degree assault in the criminal case, he acknowledged that he had “acted purposefully or knowingly” in stabbing James.

Second, the court considered whether the prior adjudication resulted in a judgment on the merits. The court found that the facts surrounding Paul’s plea in the criminal case suggested the criminal court allowed Paul’s plea because “a factual basis existed for the plea of guilt.” The court “resolved the second factor in favor of collateral estoppel” because determinations in the criminal plea proceeding were “made on the merits of the facts presented,” as indicated by the trial judge in the criminal proceeding making inquiries to determine that a factual basis for the plea existed and his ensuring that Paul’s plea was indeed voluntary.
Third, the court determined "whether the party to be estopped was . . . in privity with a party to the prior adjudication."118 This factor, the court determined, hinged on whether the parties' interests were "so closely aligned . . . that the non-party [could] be fairly said to have had its day in court" in the earlier litigation.119 The court adopted the Restatement's view120 that privity existed because there was a specific relationship with a criminal defendant that served the same end as privity.121 In the instant case, the court found privity existed because there was "a contractual relationship between a promisee, . . . Paul, and a third party beneficiary [of Paul's insurance through State Farm], . . . James."122 The court concluded that Paul's and James's interests were "tightly aligned" with the question whether Paul acted intentionally in stabbing James.123 The majority held that, because James's claim derived from Paul's contractual rights under his insurance contract with State Farm, James was in privity with Paul and was precluded to the same extent as was Paul.124

Finally, the court considered if the parties had a "full and fair" opportunity to litigate the intent issue in the first suit.125 The majority held that Paul's guilty plea in his criminal case was a "full and fair" opportunity to litigate the issue of intent.126 The court held that, because Missouri law permits defensive non-mutual collateral estoppel,127 State Farm could assert that Paul's guilty plea in his criminal case estopped James from alleging that Paul stabbed him negligently, rather than intentionally, in an attempt to trigger State Farm's duties to defend and indemnify Paul.128 The majority's opinion, however, suggested that, when there are non-mutual parties, the court "will be less inclined to allow" offensive collateral estoppel as opposed to defensive collateral estoppel.129 Nevertheless, the court held that State Farm "invoke[d] collateral estoppel defensively," which "suggest[ed] that the fourth factor [did] not weigh against collateral estoppel in this case."130 The majority held that, to the extent prior Missouri cases131 had

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118. Id.
119. Id.
120. See supra text accompanying notes 94-95.
121. See James, 49 S.W.3d at 682-89; supra notes 91-95.
122. James, 49 S.W.3d at 683.
123. Id. at 684.
124. Id.
125. Id.
126. Id. at 685-88.
127. See supra text accompanying notes 98-104.
128. James, 49 S.W.3d at 685-86.
129. See id. at 685. "Only two Missouri cases have permitted offensive, non-mutual collateral estoppel." Id. at 685 n.5.
130. Id. at 685-86.
131. See Wallace v. Dir. of Revenue, 786 S.W.2d 893 (Mo. Ct. App. 1990);
relied not on a non-mutual collateral estoppel rule, but, rather, on an evidentiary rule that a plea of guilty was admissible but not conclusive, they were overruled.\textsuperscript{132} The court concluded that, because there is a higher burden of proof required in a criminal case, the criminal defendant has a “full and fair opportunity to litigate the elements... including... the culpable mental state[,]” even where the determination of guilt arose from a criminal plea rather than a conviction.\textsuperscript{133}

The court found that, in the instant case, the civil judgment in favor of James “was, in effect, a default judgment where” both plaintiff James and defendant Paul “had parallel interests to advance in obtaining a fact finding inconsistent with the criminal judgment.”\textsuperscript{134} In finding that State Farm should be allowed to apply the doctrine of collateral estoppel, the court held that the doctrine is designed to avoid “legal maneuvering” that can lead to “superficially inconsistent finding[s]” as in the instant case.\textsuperscript{135} The court expressed concern that, if State Farm was not able to assert issue preclusion, Paul, contrary to Missouri policy, would “be insulated by an insurer from the full brunt of economic responsibility resulting from his admittedly intentional criminal act.”\textsuperscript{136}

For James to overcome the preclusive issue of intent as evidenced by Paul’s guilty plea in the criminal case, the court held that James not only must produce evidence that Paul was mentally unable to stab James intentionally but also must show that Paul’s plea was in some way “tainted so as to make application of collateral estoppel inequitable.”\textsuperscript{137} The court found that the record in the instant case supported a finding that it was not inequitable to apply defensive collateral estoppel to Paul’s guilty plea.\textsuperscript{138}

Curtain v. Aldrich, 589 S.W.2d 61 (Mo. Ct. App. 1979). These cases were overruled to the extent they are inconsistent with Oates v. Safeco Insurance Co. of America, 583 S.W.2d 713 (Mo. 1979). See James, 49 S.W.3d at 685.

\begin{itemize}
    \item \textsuperscript{132} Id. at 685.
    \item \textsuperscript{133} Id. at 686.
    \item \textsuperscript{134} Id. at 687.
    \item \textsuperscript{135} Id. “The transcript of the plea hearing disclose[d] that James was present at some of the criminal proceedings, consented to the disposition, and was a partial beneficiary of the plea in that restitution to James was one of the conditions of probation imposed by the trial court.” Id. at 688 n.9.
    \item \textsuperscript{136} Id. at 687-88.
    \item \textsuperscript{137} Id. at 688.
    \item \textsuperscript{138} Id. The court found that the record indicated that: (1) Paul denied any history of mental illness; (2) Paul admitted his culpability in the criminal violation; (3) there was no evidence that his plea was involuntary or otherwise tainted; and (4) the court “should not speculate that Paul had some hidden reason or felt some unstated pressure to plead guilty” when there was proof of that finding in the trial record. Id.
\end{itemize}
Although James argued that State Farm’s refusal to defend Paul in the civil suit alleging negligent stabbing equitably estopped State Farm from benefitting from the use of Paul’s guilty plea, the court disagreed. The court held that where an insured’s admission as part of a prior adjudication confirmed that the insured’s conduct was intentional, the duty to defend, based on comparison of the policy provisions with the allegations of the petition, did not arise. The court held that equitable estoppel “applies where the refusal to defend was unjustified under the circumstances.” Because the court found that State Farm was justified in relying on Paul’s guilty plea in determining that it had no duty to indemnify him, the court found that State Farm did not have a duty to defend Paul.

The court also rejected James’s argument that Paul’s guilty plea was negated by the judgment of the trial court in the civil case and that State Farm was “collaterally bound by the civil judgment.” In rejecting these arguments, the court again reiterated that the offensive use of collateral estoppel is “disfavored.” The court held that there was no privity between Paul and State Farm in the tort action but, instead, found that Paul and James shared identical interests in shifting the obligation to pay the civil judgment to State Farm. The court found that State Farm could not have “effectively assert[ed] its policy defenses in the civil action until the garnishment proceeding” because of the “inherent conflict between State Farm and Paul.” For these reasons, the court

139. Id. at 688-89. James relied on prior Missouri case law providing that “ordinarily, the duty to defend is determined by comparing the policy provisions with the allegations of the petition.” Id. at 689.

140. Id.

141. Id.

142. Id. The court found that State Farm would have encountered “an irreconcilable conflict with the insured” had it defended Paul on the ground that his conduct was intentional rather than negligent. Id.

143. Id.

144. Id.

145. Id.; cf. id. at 693-94 (Wolff, J., dissenting). Judge Wolff disagreed with the majority that there was privity between James and Paul. See id. at 693-94 (Wolff, J., dissenting). Judge Wolff argued that “[i]t is a matter of fundamental due process that one is not bound by a judgment to which he was not a party or adequately represented by a party.” Id. at 693 (Wolff, J., dissenting). In Judge Wolff’s view, “privity [was] not established simply because the parties [were] interested in the same question or in proving or disproving the same state of facts.” Id. at 694 (Wolff, J., dissenting) (quoting Clements v. Pittman, 765 S.W.2d 589, 591 (Mo. 1989) (en banc)). Judge Wolff advocated remanding the case to the circuit court so that both James and State Farm could “have their day in court.” Id. (Wolff, J., dissenting).

146. Id. at 689.
concluded that "the doctrine of equitable estoppel [did] not apply to prevent State Farm from asserting the absence of coverage."147

The Missouri Supreme Court upheld the appellate court's judgment that the trial court erred in granting James's motion for summary judgment because it failed to give preclusive effect to Paul's guilty plea in the prior criminal judgment.148 The plea, the court held, "foreclosed Paul and any party claiming through him from asserting that his conduct was not intentional."149 The court also found that the trial court erred in holding that equitable and collateral estoppel prevented State Farm's assertion that no coverage existed.150 Because the court found there was no genuine issue of material fact as to Paul's mental state when stabbing James, the court remanded the case to the trial court for entry of summary judgment in favor of State Farm in the garnishment proceeding.151

B. The Minority Opinions

Judge Wolff dissented from the majority's holding on the third prong of the Oates analysis152 because he believed that there was no preclusive privity between Paul and James.153 Judge Wolff argued that Restatement (Second) of Judgements Section 85, comment f, illustration 10 stands for the proposition that a victim is not estopped in a tort action against his or her assailant from showing that the assailant's act was negligent rather than intentional, despite the assailant's prior criminal conviction.154 The majority, however, concluded that case law in other jurisdictions had rejected the illustration in two of three cases, and asserted that James's case was a garnishment proceeding derivative of the contractual relationship between Paul and his insurer, State Farm, not a tort action against Paul.155

Judge White dissented from the majority's holding because he concluded that prong four of the Oates analysis had not been satisfied to permit use of defensive collateral estoppel.156 Judge White asserted that State Farm should not be allowed to use Paul's guilty plea to "deprive Danny James . . . of his day in

147. Id.
148. See id.
149. Id.
150. Id.
151. Id.
152. See supra text accompanying notes 91-95.
153. James, 49 S.W.3d at 693-94 (Wolff, J., dissenting).
154. Id. (Wolff, J., dissenting); see also id. at 684.
155. Id. at 684.
156. See id. at 690-93 (White, J., dissenting).
court." Judge White articulated that, because "plea bargains do not result from a full litigation of the underlying factual issues," it should be shown that Paul's intent was fully litigated in the plea bargain proceeding or the issue of intent should be remanded to the garnishment court for a proceeding on the merits. Judge White asserted this fact should be seen through the lens of Missouri evidentiary law, which states that a criminal "guilty plea is admissible in a subsequent civil proceeding, but is not conclusive and may be explained." 

V. COMMENT

Although the court decided James largely based on the doctrine of collateral estoppel, the attorneys involved believed the case to be more about the extent of State Farm's duties, given an intentional act by an insured (in this case, a criminal plea that required intent as the necessary mental state). It is a common practice for tort plaintiffs to underplead claims against insureds where doing so is necessary to trigger an insurer's duty to defend. The tort plaintiff who successfully triggers the insurer's duty to defend by underpleading on the issue of intent helps increase the plaintiff's access to insurance funds. Even in cases of questionable coverage, underpleading: (1) increases the potential costs of defending a suit, and, thus, creates a settlement value for a case that otherwise only might trigger the duty to defend but not the duty to indemnify; (2) estops the insurer from contesting coverage if it wrongly refuses to defend; and (3) estops the insurer from later contesting coverage if it fails adequately to reserve its rights to contest coverage. On the whole, underpleading has four likely results: (1) insurers will fund insureds' defense more often; (2) more intentional harms will be paid for by insurance funds; (3) there will be "a higher incidence of coverage lawsuits" between insureds and insurers; and (4) the way

157. Id. at 690 (White, J., dissenting).
158. Id. (White, J., dissenting).
159. Id. at 693 (White, J., dissenting).
160. See Kenneth C. Jones, Homeowner's Policy Didn't Cover Man for Assault: Guilty Plea Acted as Collateral Estoppel, 15 Mo. Law. Wkly. 645 (June 4, 2001). Phillip Grubaugh, attorney for State Farm, told Missouri Lawyers Weekly:
This is the [Missouri] Supreme Court's definitive case to date on collateral estoppel[,] ... but I'm surprised the court used this case as a vehicle to discuss collateral estoppel, because both [the attorney for the plaintiff] and I saw it as a case about what the duties of an insurance company are when there's an intentional act.

Id. at 645, 670.
161. Pryor, supra note 53, at 1729.
162. Pryor, supra note 53, at 1732-36.
163. Pryor, supra note 53, at 1732-36.
plaintiffs tell their tort stories and the way tort suits are tried will be affected. Underpleading, then, has a tremendous impact on the role insurance companies play in tort suits against their insureds.

Read broadly, the result in James sends a strong signal that Missouri courts now will determine that insurers have no duty to defend an insured where a criminal plea or conviction previously has established that the insured acted intentionally. This result should deter Missouri tort plaintiffs from underpleading where they are aware that the insured defendant has pled or been found guilty in the related criminal proceeding. Thus, the holding in James limits a criminal victim’s ability to access insurance funds to satisfy any judgment he or she is awarded in a tort action against his or her assailant. This result of the court’s holding seems unfair to the victim of the insured’s criminal act because underpleading to trigger insurance coverage is usually the plaintiff’s best—or only—means of recovery where the defendant-insured otherwise does not have the resources to satisfy a judgment. The problem of a plaintiff’s access to recovery is further exacerbated because, where the defendant has no non-insurance assets, the plaintiff, in practice, does not choose between underpleading and litigating the issue of intent. Rather, the plaintiff chooses between underpleading and not suing the defendant at all.

Notwithstanding the concern that the victim may have no true tort recovery against his or her assailant, the result in James is best for the majority of insureds in the long run. While the court’s holding in the case is a clear victory for insurance providers, it is also a win for insurance consumers. Had the court compelled State Farm to provide coverage for Paul’s intentional act simply because it was properly underpled by the plaintiff, the insurer’s risk and costs of defending similar actions in the future would be passed on to all insureds through higher premiums and more tightly drafted exclusion language in insurance policies. The holding in James mitigates against these long-term effects by discouraging underpleading in tort suits flowing from an insured’s admittedly criminal conduct.

The instant case, however, does not set forth an insurer’s responsibility when a party underpleads in order to draw the insurer into court in a situation in which there has been no prior determination of criminal intent. The court left

164. Pryor, supra note 53, at 1738.
165. See, e.g., Pryor, supra note 53, at 1738-39.
166. Pryor, supra note 53, at 1748.
167. Pryor, supra note 53, at 1748.
168. See Pryor, supra note 53, at 1747-52. Professor Pryor has expressed concern that excessive use of underpleading costs society more in the long-run because underpleading results in levels of insurance coverage that exceed what most insureds would choose to purchase and because underpleading increases the number of coverage-related lawsuits that insurers must fund. Pryor, supra note 53, at 1747-52.
open the issue of what an insurance company’s duties to the insured are in instances where there is an intentional act but no prior criminal judgment that yields collateral estoppel.\textsuperscript{169}

The court’s holding in the case also raises new issues about privity between a victim and his or her assailant, where both are attempting to make the assailant’s insurer cover the victim’s injuries. On the facts of this case, finding privity seems appropriate, as it allowed the court to apply collateral estoppel to ensure that Paul could not violate public policy by obtaining coverage for his intentional stabbing of James. In the long term, and on different facts, however, notions of privity between an assailant and his or her victim may be more problematic. As Judge Wolff’s dissent explains, the privity applied in the instant case bound the victim to the plea of his or her assailant in a way that was detrimental to his or her ability to collect restitution.\textsuperscript{170} Such an application of privity is troublesome where it binds the victim to “a judgment to which he was not a party or adequately represented by a party” in violation of his due process rights.\textsuperscript{171}

Senior counsel for Shelter Insurance, H. William Turley, has expressed concern that, on the facts of the instant case, it was correct to avoid the “‘legal stratagems designed to create inconsistent factual adjudications’” but that, in the long term, the dissents of Judges White and Wolff may be more correct.\textsuperscript{172} In the end, James raises concerns that the majority’s holding “may well preclude the litigation of more genuine coverage issues by future plaintiffs, who, unlike Mr. James, have a real chance of winning on the merits.”\textsuperscript{173}

VI. CONCLUSION

The holding in James v. Paul articulates a new deterrence for plaintiffs seeking to underplead against criminally guilty insureds. As Judge Holstein articulated, “the doctrine of collateral estoppel was designed, in part, to eliminate the very sort of legal maneuvering that occurred [in James],” which leads to “superficially inconsistent findings . . . and encourage[s] continued legal stratagems designed to create inconsistent factual adjudications.”\textsuperscript{174} With this

\textsuperscript{169} See Jones, supra note 160, at 645, 670 (Attorney for State Farm, Phillip Grubaugh, believed the primary i-sue in the case concerned the “duties of an insurance company when there’s an intentional act.”).

\textsuperscript{170} See James v. Paul, 49 S.W.3d 678, 693-94 (Mo. 2001) (Wolff, J., dissenting).

\textsuperscript{171} Id. (Wolff, J., dissenting).

\textsuperscript{172} See H. William Turley, Fighting the Bad Fight, 15 Mo. Law. Wkly. 670, 670 (June 4, 2001) (quoting James, 49 S.W.3d at 687).

\textsuperscript{173} See id.

\textsuperscript{174} James, 49 S.W.3d at 687.
strong rebuke in mind, plaintiffs' attorneys in Missouri should be more cautious in utilizing underpleading to force insurers into court in order to access their pocketbooks. In the near future, this decision may impact an entire class of tort recovery in Missouri. Attorneys approached to file claims against the Kansas City pharmacist, Robert Courtney, accused of diluting cancer drugs, for example, should be especially attentive to the outcome of the pharmacist's criminal proceedings.7 Because the pharmacist pled guilty to the criminal offense of diluting the drugs,7 the holding in James effectively will prevent plaintiffs from underpleading to gain access to any insurance coverage. The pharmacist's insurer can use the holding in James to refuse to defend him in any tort actions because, under current Missouri law, a criminal plea now will estop tort liability coverage for an insured's intentional acts.177

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175. See Stephanie Simon, Emotions High as Pharmacist Pleads Guilty to Diluting Drugs, L.A. TIMES, Feb. 27, 2002, at A8. On February 26, 2002, Kansas City pharmacist Robert Courtney pled guilty to twenty federal counts of adulterating, tampering with, and mislabeling chemotherapy drugs sold at his Kansas City pharmacy. Id. Courtney admitted to diluting the drugs to net "profits he needed to pay $600,000 in back taxes and fulfill a $1 million pledge to his church." Id. Courtney’s personal assets of almost $12 million have been frozen by the court and will be used as a restitution fund for "the 34 victims named in the criminal case and to some of the 300 others who have filed civil lawsuits against [Courtney]." Id.

176. See supra note 175.

177. James, 49 S.W.3d at 682-89.