

Legal Matters

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Do you really know everything your auto insurance covers?



Most of the time, auto insurance is fairly straightforward. You're typically covered for damage to your own car, and for damage you might do to other cars or property. You're covered for injuries to yourself or others in an accident, for car theft, and possibly for roadside assistance or a rental car if your own car breaks down.

But auto insurance can cover a lot of other things that you might not expect. That's why it's always good to talk to a lawyer whenever there's an injury or accident – only a lawyer on your side can determine the full extent to which you might be compensated.

For example...

► Charles Walega tied a 1,500-pound gun safe to the hitch of his pickup truck with a rope, so he could move it in order to sell it. As his wife was driving the truck, dragging the safe along the driveway, it flipped over and injured Charles' leg.

The couple's insurance company – State Farm – claimed that the accident wasn't covered because the truck wasn't being driven on a public road and because it was being used as a "tool" rather than as a means of transportation.

But the Michigan Court of Appeals sided with the Walegas. The court said it didn't matter that the truck was on a private driveway, and it didn't matter that it was being used to drag a safe, because people use pickup trucks to drag or pull things all the time. Dragging a safe is more unusual than hauling a boat, but it's the same idea.

► Richard Sloane was a highway construction worker who was working with another man to lay asphalt near a shopping mall, using a front-end

What you can learn from rock star Jim Morrison's will

Jim Morrison, the lead singer of the popular rock band The Doors, died in 1971 at age 27. Before his death he had signed a simple, one-page will that left everything to his girlfriend, Pamela Courson.



As a result of the will, Pamela inherited his entire estate. Pamela herself died shortly afterward of a heroin overdose. Because Pamela didn't have a will, most of Morrison's fortune then went by law to Pamela's closest living relatives – her parents.

Now, Pamela's father was a former Navy officer and a high school principal in conservative Orange County, California. He probably never imagined that he would spend decades collecting millions of dollars in rock-and-roll royalties, or have artistic control over a counterculture legend's poetry and a major say in how Morrison was portrayed in movies such as *The Doors*.

It's probably safe to assume that Morrison didn't anticipate this either, and it probably wasn't exactly what he had in mind.

A good estate plan considers all the "what-if's," and will make sure you accomplish your objectives, even if something you didn't anticipate happens along the way.

Morrison could easily have avoided this fate by setting up a trust that would have cared for Pamela, but that would have directed his fortune to his own family if something happened to her, and put someone he knew and trusted in charge of his artistic legacy.

How is all this relevant to people who aren't rock stars?

The sad fact is that many people sign simple or "form" wills, sometimes out of a book or from the Internet, and they make a similar and tragic mistake.

For instance:

• Alan signed a "form" will leaving his estate to his second wife. His second wife inherited his estate, and when she died, the assets went to her blood relatives. As a result, Alan's own children from his first

Extended family may help with a mortgage

People who live with members of their extended family – or have boarders living with them – may have an easier time getting a mortgage, under new rules from Fannie Mae.

Previously, if you applied for a mortgage, only your own income could be counted to see if you qualified, even if you had family members or others living with you who contributed to your housing payments on a regular basis.

Now, however, under Fannie Mae's "HomeReady" program, the income of extended family members who live with you can be considered on your mortgage application – even if the family members don't sign the loan and aren't legally responsible for the payments.



According to Fannie Mae, the reason for the change is that such arrangements are common among minority families, and in the past these families have been prevented from getting a loan even though their overall family income is stable and they would otherwise qualify.

Live-in extended family members contribute to house payments in about 19 percent of African-American households, and about 24 percent of Hispanic households, according to Fannie Mae.

The company also said that if borrowers have a boarder living with them who pays rent, the amount of the rent may be considered when applying for a HomeReady mortgage.

Clicking or e-mailing can create a binding contract

loader and a dump truck.

Suddenly, two different drunk drivers – both of whom had just been kicked out of the same bar – crashed into the construction vehicles. Sloane was pinned between them and injured.



The two drunk drivers didn't have enough insurance to compensate Sloane's family, so the family sought coverage under the auto insurance policies on the two construction vehicles.

Once again, the insurance company argued that the accident wasn't covered – this time because Sloane wasn't driving, using, or getting out of the vehicles at the time of the accident.

But the Virginia Supreme Court sided with the family, and said Sloane was generally "using" the vehicles as part of his construction work when he was injured.

► Eleanor Borriello hired a company to transport her via a wheelchair van to an adult day-care center. The van employees parked on the street, strapped Eleanor in her wheelchair, and began bringing her outside. One of the employees slipped on Eleanor's front porch, and Eleanor fell down the porch stairs.

Travelers, which insured the van, said the accident wasn't covered under the automobile policy because it had nothing to do with the van itself.

But the highest court in Massachusetts disagreed. The Travelers policy said that it covered accidents involving "loading and unloading" a vehicle. In this case, the workers were carrying Eleanor downstairs as part of their attempt to "load" her into the van.

► Marcia Rhodes was driving on a two-lane road which had been reduced to one lane while a tree trimmer worked in the area. The tree trimmer had parked his pickup truck in one lane and was grinding a stump near the roadway. A police officer directed Marcia to stop and wait for oncoming traffic, at which point a truck driver behind her, who wasn't paying attention, crashed into her.

Marcia sued the truck driver, but she was also able to collect from the tree trimmer's auto policy. The reason: The accident arose out of the trimmer's use of the pickup truck when he parked it in such a way as to block traffic.

There are countless other cases like these in which an auto insurance policy covered an injury in a way you might not expect. Unless you consult an attorney, you'll never know if you're receiving all the compensation to which you're entitled.

marriage received nothing.

• Beth signed a "form" will leaving her estate to her son, who had children from his first marriage. But when her son died, all of Beth's assets went to the son's second wife – and not to her own grandchildren.

This is why it's essential to talk to an attorney about your wishes. A good estate plan considers all the "what-ifs," and will make sure you accomplish your objectives, even if something you didn't anticipate happens along the way.

'Temps' have more rights in the workplace

In the past, it's generally been assumed that companies don't have to treat their workers as employees if they bring them on board via a temp or staffing agency. As long as the agency pays the workers' salaries, the agency is their real employer.



But that may be changing. For instance, a woman named Brenda Butler signed up with a temp agency in South Carolina. She was assigned to work at an automotive factory, where her supervisor allegedly sexually harassed her.

Brenda complained to both the temp agency and her supervisor's boss, but neither acted to stop the harassment. In fact, the supervisor's boss allegedly told the temp agency that the company didn't need her anymore.

Brenda sued the automotive company for the harassment. The company argued that the lawsuit should be thrown out, because it wasn't Brenda's employer – the temp agency was.

However, a federal appeals court sided with Brenda. It said that in this case, Brenda might have had *two* employers – the temp agency and the automotive company.

Specifically, the court noted that Brenda did the same work as some of the automotive company's regular employees, she was overseen by one of the company's regular supervisors, and the company had the ability to "fire" her by telling the agency not to let her return.

Therefore, even though Brenda was a temp, she could sue.

A company in Indiana filed an insurance claim for storm damage, and the insurance company denied it, saying the damage had occurred outside the policy period. After some e-mail negotiations, the company and the insurer agreed on settlement terms. A company official sent an e-mail saying, "Agreed. Go ahead and draft the paperwork."

A short time later, the company changed its mind and reneged on the deal.

But a federal judge said the e-mail agreement was valid and could be enforced by the insurer, because the two sides had agreed to all the terms.

The case is an important reminder that you should be very careful with e-mail in any business negotiation. Many people think of e-mail as an informal means of communication, but it can create a binding contract just like a written document.

In another case, a New York company ran a loan-application website. As part of the application process, users had to click a box to get from one screen to the next. Above the box it said, "Clicking the box below constitutes your acceptance of ... the borrower registration agreement."

The borrower registration agreement wasn't on the page, but the words "borrower registration agreement" were a hyperlink to another page that included the complete contract. In fine print, the contract said that disappointed borrowers couldn't sue in court and had to take all claims to arbitration.

Was this binding?

Yes, said a federal court. Even though the agreement wasn't visible and could be accessed only via a hyperlink, it was still a valid contract, and clicking on the box meant that borrowers gave up their right to sue.

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