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Woman whose fianc set fire to home entitled to half of policy proceeds

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An innocent co-insured whose fianc had intentionally set fire to their home could recover under their homeowners' insurance policy, but the trial judge had properly limited her recovery to half of the policy limits, the Supreme Judicial Court ruled on Jan. 21.

In the case *Aquino v. United Property & Casualty Company*, the SJC was presented with a fact pattern similar to that in its 1938 decision *Kosior v. Continental Ins. Co.*

In that case, the innocent co-insured spouse whose husband deliberately set fire to the house was denied equitable relief to recover insurance proceeds.

The SJC did not explicitly overrule *Kosior*, calling the *Aquino* case "distinguishable." But Justice Scott L. Kafker's opinion at least suggests the *Kosior* court may no longer be viable.

"We conclude that the *Kosior* case, which contains little analysis and appears to be based on outdated assumptions about the marital relationship and the legal rules associated therewith, is distinguishable, even if it remains good law," Kafker wrote.

The *Kosior* decision did, however, spare *United Property & Casualty* from potential liability under Chapter 93A. Despite her lack of involvement, the insurer had denied plaintiff Wenda Aquino's claim for coverage, relying on an intentional loss exclusion in the policy that barred recovery when any co-insured intentionally caused a loss.

A Superior Court judge found that the intentional loss exclusion as written in the policy violated the standard policy language mandated under G.L.c. 175, 99, Twelfth, a decision that the SJC affirmed. But the SJC said that the *Kosior* decision had given the insurer a good-faith basis to deny coverage, taking Chapter 93A liability off the table.

The 38-page decision in *Aquino v. United Property & Casualty Company*, Lawyers Weekly No. 10-011-20, can be found [here](#).

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