

## INSURANCE LAW – FALL 2005 FINAL EXAM

### QUESTION #1

Medco Medical Devices, Inc., (“Medco”), is in the business of designing and manufacturing subdural medical implants, including pacemakers. Specifically, Medco designed and manufactured a pacemaker referred to as the *Cardio 1*. Apparently, *the Cardio 1*, as designed and manufactured, harbored an inherent defect that resulted in the unit failing to trigger when required. This defect, however, only caused the *Cardio 1* to fail sporadically. Accordingly, Medco executives, despite full knowledge of the sporadic failure, chose to allow distribution of the product since the profit margin far outweighed any potential liability.

On May 20, 2000, Wes Lawson was the recipient of a *Cardio 1* pacemaker after suffering his first heart attack at the age of 52. Apparently, Wes had been complaining of chest pain for at least 2 years before the May 20, 2000 attack, but chose to ignore the signs and symptoms. Tragically, on July 6, 2004, some four years after the insertion of the *Cardio 1*, the unit’s inherent defect caused it to fail, resulting in Wes’ untimely demise. In actuality, you learn that Wes became “overheated” during a romantic interlude with his longtime paramour, Angelina.

Thereafter, Wes’ widow, Hilda Cashinin Lawson (“Hilda”), retains your services to help sort through this mess. After questioning her, Hilda discloses that she found a copy of a Term Life insurance policy, issued by *Whata Life Insurance Company*, (“Life Policy”) on April 30, 1999. Her grief, however, prevented her from even opening the envelope. After reviewing the Life Policy, you learn that the named beneficiary of the \$1,000,000 policy isn’t Hilda at all: Its Angelina! Apparently, Angelina was the owner of the policy that clearly insured the life of her sweetheart, Wes! Unbeknownst to Angelina, however, her “little macho man,” Wes, disclosed on Life Policy application that he was the picture of health. In fact, he was so convincing, Whata Life didn’t even bother with the physical.

Your keen, analytical mind leads you to the inescapable conclusion that there are a plethora of avenues to pursue. You advise Hilda that you will advance a products liability claim against Medco seeking “all types of damages”, as well as a claim against the Life Policy. Unfortunately, your subsequent claim against the Life Policy elicits a denial from *Whata Life Insurance Company*. Moreover, you receive a denial from *Aetna Casualty and Surety Insurance Company*, (“Aetna”) on behalf of Medco.

In its correspondence to you, Aetna acknowledges that while Medco was insured at the time the implant was installed, it was uninsured at the time of Wes’ untimely demise. Further, Aetna refers to paragraph 10 of its policy, which provides that it will indemnify Medco “*for all sums which the insured shall become legally obligated to pay as damages because of injury or damage to which this policy applies.*” They noted further that the policy applies to “*injury or damage arising out of: bodily injury or property damage caused by an ‘occurrence.’ An ‘occurrence’ is defined as an accident, event or happening, including injurious exposure to conditions, which results, during the policy period, in bodily injury or property damage neither expected nor intended from the standpoint of the insured.*” Aetna also notes that in addition to its refusal to indemnify, it advises that it will not defend any action brought against Medco.

Accordingly, it directs you to forward all future correspondence/pleadings directly to Medco or its legal representative.

Prepare a well-organized essay concerning the rights and liabilities of all parties to this sordid affair. Include all relevant issues as they relate to each party, and be certain to discuss the relevant minority and majority rules. Also, be certain to address all the relevant legal theories that might provide a basis for denial by each insurer.

**IMPORTANT: Return your exam question with your essay!**

*Have a great holiday season, and Happy New Year!*