

<u>CASE NO.</u>	<u>VOL. NO.</u>	<u>PAGE</u>
DAVID CREIGHTON EMENEAU (Appellant)	- and -	LOMBARD CANADA LIMITED (Respondent)
CA 177303	Halifax, N.S.	BATEMAN, J.A.

[Cite as: **Emeneau v. Lombard Canada Ltd., 2002 NSCA 83**]

APPEAL HEARD: June 3, 2002

JUDGMENT DELIVERED: June 7, 2002

SUBJECT: Insurance policy exclusion clauses.

SUMMARY: The appellant, in an attempt to commit suicide, backed his truck into a garage, partially closing the door. He poured gasoline on the seat and floor of the truck cab and on the floor of the garage under the truck. His plan was to ignite the gasoline with the resulting explosion rendering him unconscious while the fire caused his death. Contrary to his plan, he did not lose consciousness in the explosion. The inside of the truck cab began to burn intensely and the heat drove him from the truck. He ran outside of the building where a duty fire watchman ran to assist him. The fire was extinguished but not before it had caused serious burns to the appellant and substantial destruction of property, including that of two tenants of the building. The tenants obtained judgment against the appellant in the amount of their losses. The appellant sought indemnification under his homeowner's policy. The insurer resisted on the basis of an exclusion clause in the policy exempting coverage for intentional acts causing loss or damage. The trial judge agreed that the insurer was not liable to indemnify the appellant.

ISSUES: Did the appellant's conduct fall within the exclusion clause?

RESULT: Appeal dismissed. There is considerable case law addressing the relevant issues. The significant legal debate in this area centres upon whether, in order for the exclusionary clause to apply, there must be proof of intent to cause injury as distinct from proof of intent to do the act which caused the injury. If the requirement is that there be intent to cause injury, the secondary issue is in what circumstances that intent can be inferred. The key cases in this area are **Non-Marine Underwriters, Lloyd's of London v. Scalera**, [2000] 1 S.C.R. 551 and **Co-operative Fire & Casualty Co. v. Saindon**, [1976] 1 S.C.R. 735. It is not necessary here to develop a generally applicable description of the intent required to engage an exclusion clause. On these facts, there can be no doubt that the appellant intended to cause damage to property by fire within the meaning of this exclusion clause.

This information sheet does not form part of the court's decision. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 4 pages.

