



## Hypothetical Case

### OVERVIEW

#### ROOSTER'S ROASTERS

**"Roosters" is a privately held corporation comprised of six restaurants in metropolitan Atlanta.** Because of increasing consumer demand for its "just right" flavor that many consider to be the perfect melding of Chick-fil-A and Kentucky Fried Chicken, Roosters is now considering expansion into the neighboring states of Florida and South Carolina.

In addition to the six restaurants, Roosters has a thriving catering operation also based in Atlanta. The catering business serves a growing list of clientele and produces side dishes such as the potato salad and coleslaw that are sold at the six restaurants.

**With respect to insurance, Rooster maintains:**

- \$1M commercial auto policy with the Baumann insurance company
- \$10M umbrella policy issued by Weisel insurance
- \$1M commercial general liability policy with the Baumann insurance company

**Roosters' non-auto claim history** has been benign, consisting of mostly minor restaurant "slip and falls" and the occasional customer choking on a chicken bone. However, the auto program has been less tranquil, due largely to issues with driver background checks and those drinking on the job.

#### BAUMANN INSURANCE

**Baumann is "Roosters" insurance** and is staffed by Claim Representative Lesley Visser and Supervisor Dick Stockton and three other claims handlers. The claims operation is best described as being good at "nuts and bolts" claims handling but less conversant on emerging issues and trends. They also tend to have staffing issues as the claim handlers take vacations at the same time. Baumann insurance also tends to retain inexperienced defense counsel who are "friendly" with the claims handlers rather than utilizing a vetted panel counsel list.

### WHAT HAPPENED

#### ON FEBRUARY 10, 2023 (THE NIGHT OF THE SUPER BOWL)

- **Roosters' loss history gets even worse.** That early evening driver Bo Roberts was en route to a catering job, the insured's 2014 Ford E-Series van filled with enough food to feed the 150 expected to attend the Super Bowl dinner being hosted at the home of a local celebrity. The food was to be delivered between kickoff and the end of the first quarter (6:30pm to 7:30pm).
- **Prior to getting to work to load the food,** Roberts had driven in the insured's van to a one-hour meeting at Gamblers Anonymous which he attended. After getting to work, and loading the food, Roberts placed a couple of Super Bowl wagers with his bookie and made sure his iPad was fully charged to keep up with the game.

(continued)



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- **When he left for the delivery job** it was raining and foggy out and the Super Bowl was underway. Due to an unexpected safety early in the game, Roberts was already losing a wager. While headed down the road, the traffic light at an upcoming intersection turned from green to amber. Furious about the game and sensing that there was no traffic from either his left or right, Roberts proceeded through the intersection.
- **Roberts then immediately collides** with the right side of a 2005 Buick Park Avenue driven by 75-year-old Hurley Hill. Hill's wife and front-seat passenger, 74-year-old Betty Hill is killed instantly. For his part, Hurley Hill received life-threatening injuries that included fractures to his sacrum, skull, ribs, and lower legs. In contrast, Roberts' driver Roberts received only minor injuries that required only a single emergency department visit.

### IN LATE FEBRUARY 2023

- **Hill brings suit in state court.** Plaintiffs' attorney is well known for his ads on social media including Tik Tok and YouTube.
- **Discovery then unfolds.** Witness accounts vary as to the color of the light at time of impact. There is also opposing testimony as to whether Roberts was looking at the road or looking down prior to the accident. Some state that the light was red when Roberts entered the intersection, while others claim that the light in Roberts' lane was amber at impact. At deposition, Hill displays no recall of the accident. In contrast, Roberts steadfastly maintains the light was green when he entered the intersection and that his eyes were focused on the road.
- While liability is debatable, the damages are not. Mr. Hill spent six weeks in ICU following the accident. Although ambulatory, Mr. Hill now has difficulty caring for himself. Additionally, there is now question as to whether he will need future surgeries that may include replacement of his right knee that was injured in the accident. Befitting injuries of the magnitude Mr. Hill sustained the **medical specials** are substantial: **\$655,433.34**. The Hills had three children and six grandchildren under the age of 10. **They helped care for their oldest grandchild, a 9-year-old with autism.**
- **Bauman insurance company** has received a policy limits demand for \$1M along with a website link to a "day in the life" video.
- **Weisel insurance** has also demanded that Baumann insurance settle within the primary limit.

*What issues do you see?*

