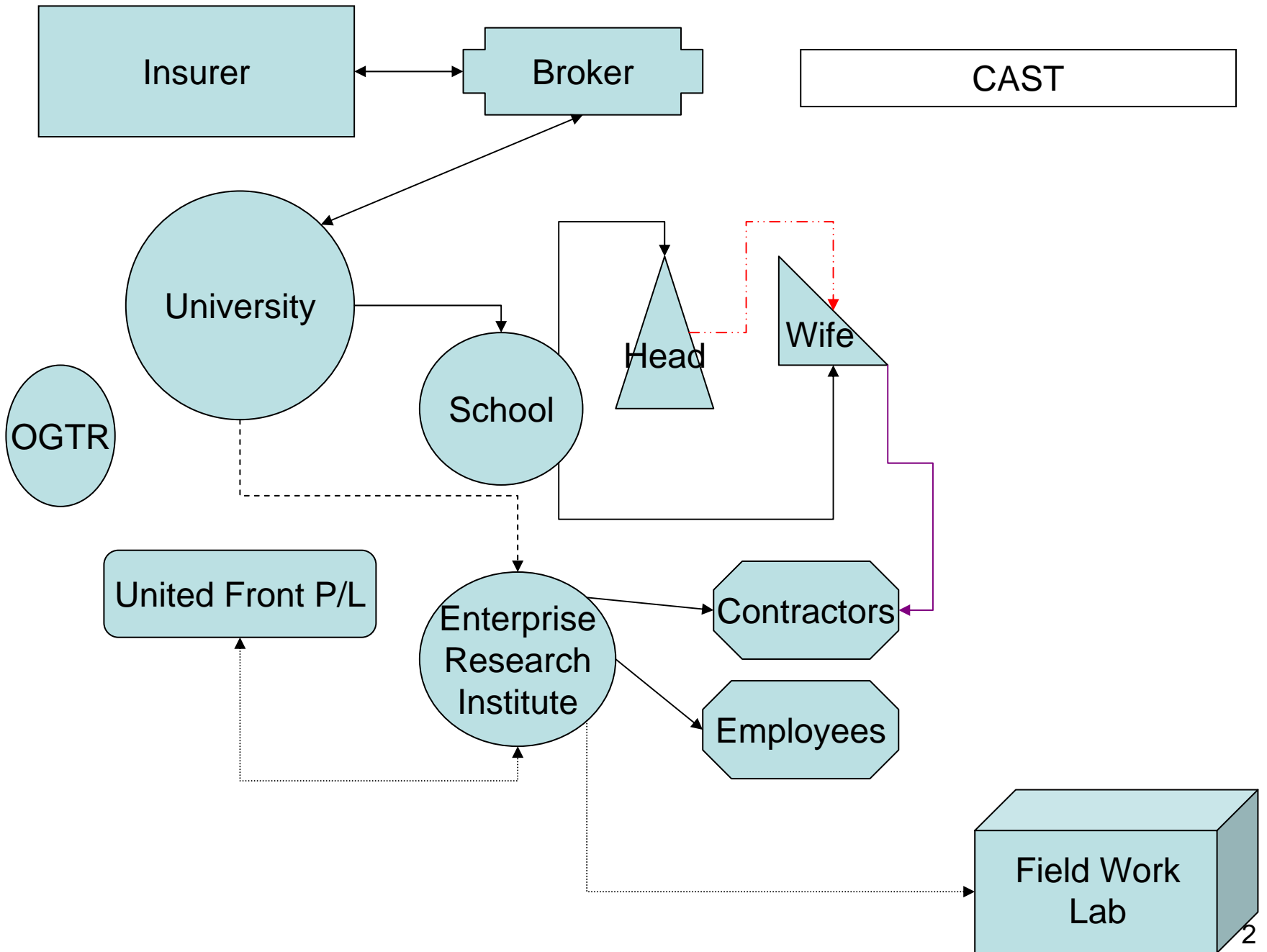
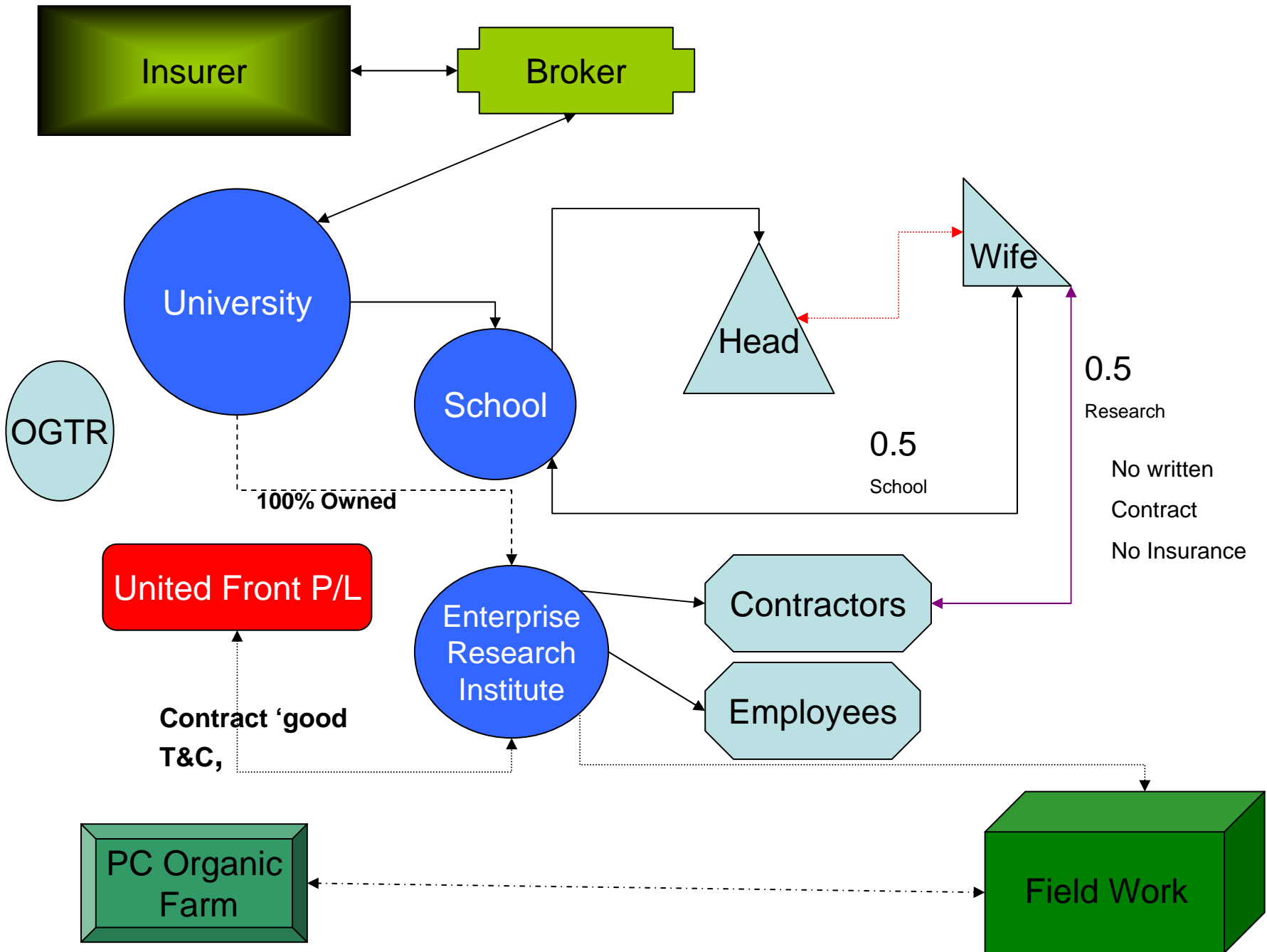


AURIMS 2007

**AURIMS 2007
HYPOTHETICAL**

Celine McInerney
Chief Prudential Officer
The University of Adelaide





Facts: Enterprise University

- Research intensive + learning & teaching
- Successful Agricultural School
- Robust Risk management
 - Adverse Events register
 - Managed at local level & reported up to University's Risk Manager
 - Significant reference for declarations and proposals
 - Well publicised and well documented

Facts: School of Agriculture

- Head of School of Agriculture, David
- Married to Winifred (researcher)
- Winnie works part time
 - 0.5 employee of School
 - 0.5 researcher under private arrangement with Enterprise Research Institute (University's Controlled Entity)
 - No formal contract as independent contractor with ERI
 - Works on campus 100% time under “informal arrangement” through HoS (her husband)

Background

- On 1 October 2006 David completes “No known event declarations: for 2007 Insurance program
 - “None Known”
- 10 October 2006 he starts 3 months’ sabbatical leave. Pressure leads him to simply “signing” Declarations. He fails to read any documents or make any inquiries of anyone (including Winnie).
- Proposal lodged with Risk Manager, then broker, then underwriter & cover is confirmed
- Inception date 1 January 2007

Facts: Enterprise Research Institute

- Enterprise Research Institute is a Controlled Entity of the University
- Dependent on research contracts and funds that flow from them
- Operating on Campus co-located with the School of Agriculture
- Mix of Uni employees/contractors
- Bound by and complies with Uni's ERM
- Insured under Uni's Insurance program

Facts: Research Contract in the Private Sector

- Private sector company called United Front P/L
 - Large global company – high profile board
 - Annual t/o \$1B (shining star on stock market)
 - Strong relationship (\$\$\$) with World Bank
 - Commercialises, licences and distributes technology from Higher Education Sector – and specialising in agricultural products and agric plant & equipment
 - Contract with Enterprise Research Institute
 - Good terms & conditions + formal contracts
 - \$10M annually to ERI through research contracts
 - Major contributor to ERI's sustainability & profile
 - United Front's research agreement gives IP to United Front

Facts: ERI & United Front

- We know the big picture – relationship
- Specifically
 - Contract for work within biological and physical containment lab (OGTR + Uni's policies and procedures)
 - AS Standards of Safety in Labs (AS 2243.3)
 - Licensed under a Biosafety Committee (IBSC)
 - GM product (tomato seeds)
 - Winnie lead researcher working in the PC2 lab

“Circumstances”

- September 2006
 - Winnie has a working relationship with the Ops Manager of Prince Charles’ Organic Farm
 - They share their mutual interests in GM products and in organic products
 - She devolves to him her* “break through” technology in tomato seeds
 - taste, growth, colour and texture are “sensational”
 - * is it hers.....?

Circumstances

- PC Farm's Ops Manager wants to see these seeds
- In spirit of collaboration, Winnie sends them to him on 11 Sept. 06
- Winnie immediately recognises “danger” and arranges for them to be returned ASAP (18 Sept 06)
- She makes no arrangements under AQIS' regime
- Ops Manager keeps some for his own purposes (Winnie doesn't know): is there anything else she doesn't know?
- Winnie knows she must “notify” someone
- On 19/9/06 she contacts OGTR: “risk” arose, was recognised & eliminated by the return of the seeds
- OGTR contacts AQIS
- She does not tell the University's Risk manager
- Remember slide no. 6.....

Things turn Sour...

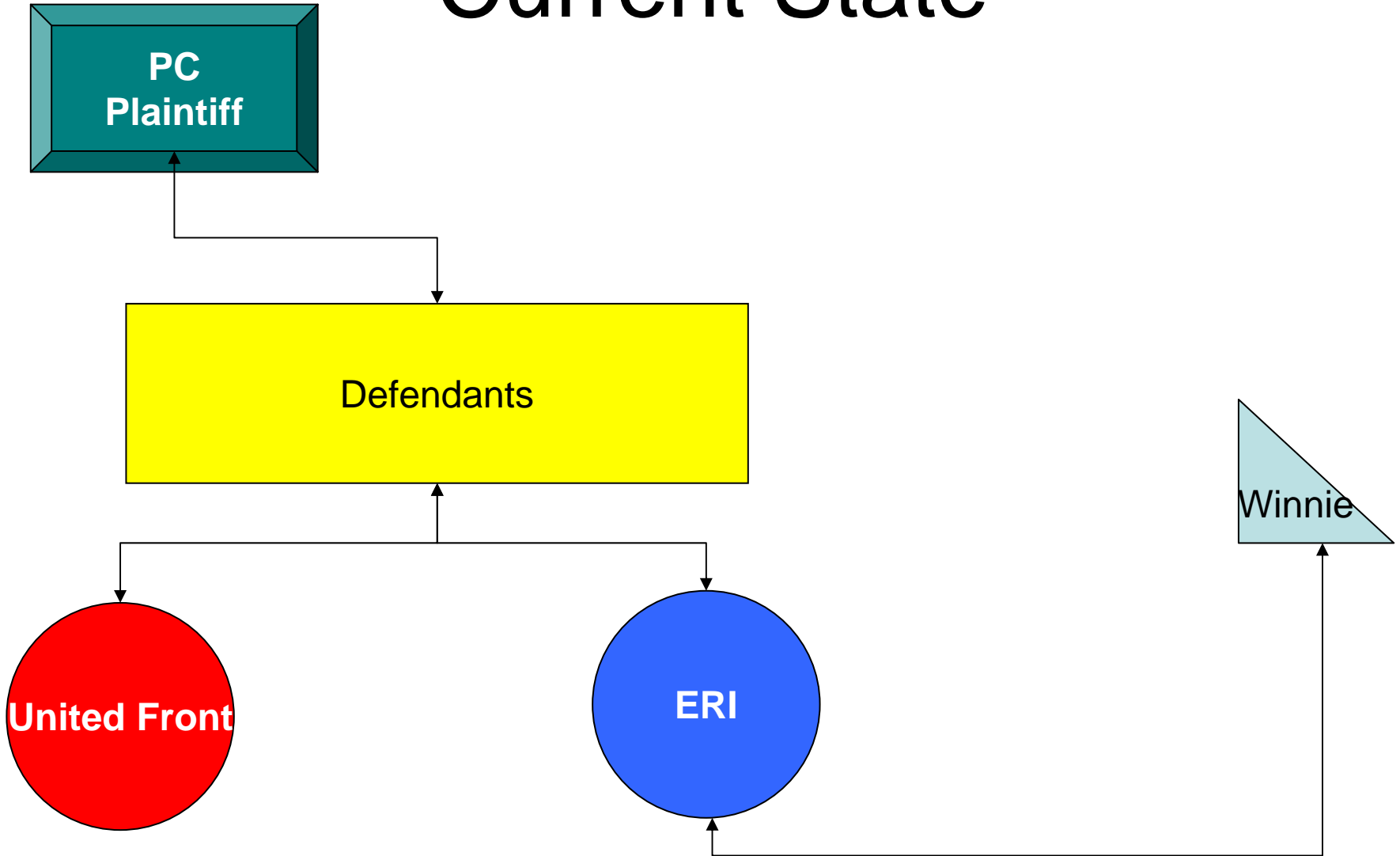
- OGTR + AQIS advise Prince Charles Farm and United Front of “a release” [and potential quarantine issue]
- PC then gives notice of claim to United Front of potential losses on product recall & general damages (\$\$\$\$\$)
- United Front puts ERI (Winnie) ‘on notice’
- United Front named in press for release of GMO product
 - Share price tumbles from \$20 to \$1
 - Significant damage to reputation and brand
- PC chutney (with GM tomatoes) produced from United Front seeds allegedly causes injury to Third Parties

“known” Event

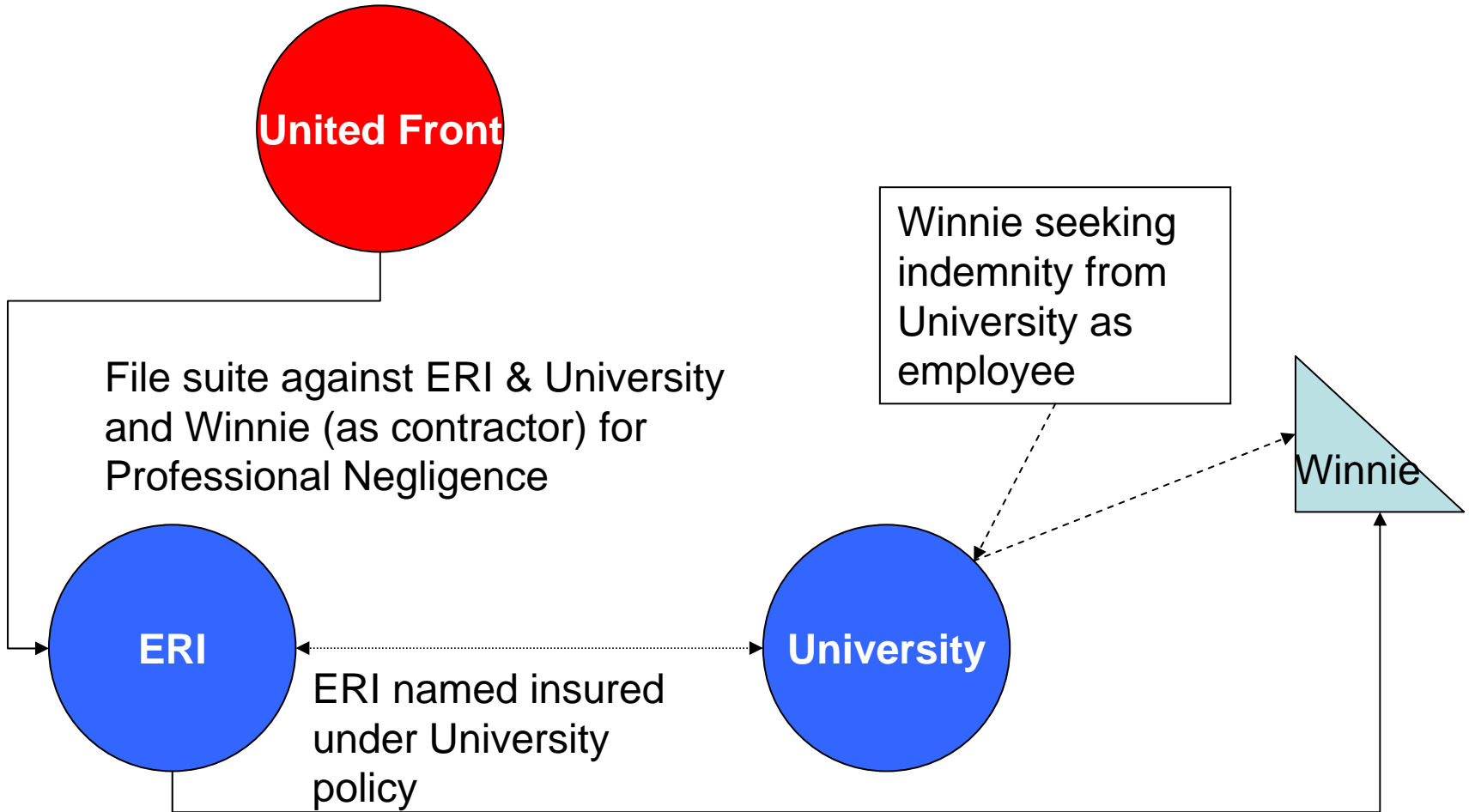
- 10 Jan 07 (after inception by 10 days) David returns
- Reads backlog on his desk
- Sees the documents about Winnie’s “sins” including advice to OGTR on release of GM seeds
- David immediately notifies University’s Risk Manager
- URM – prompts David to report to IBSC
- University’s broker and underwriters (PI and GPL) are notified of “adverse event”

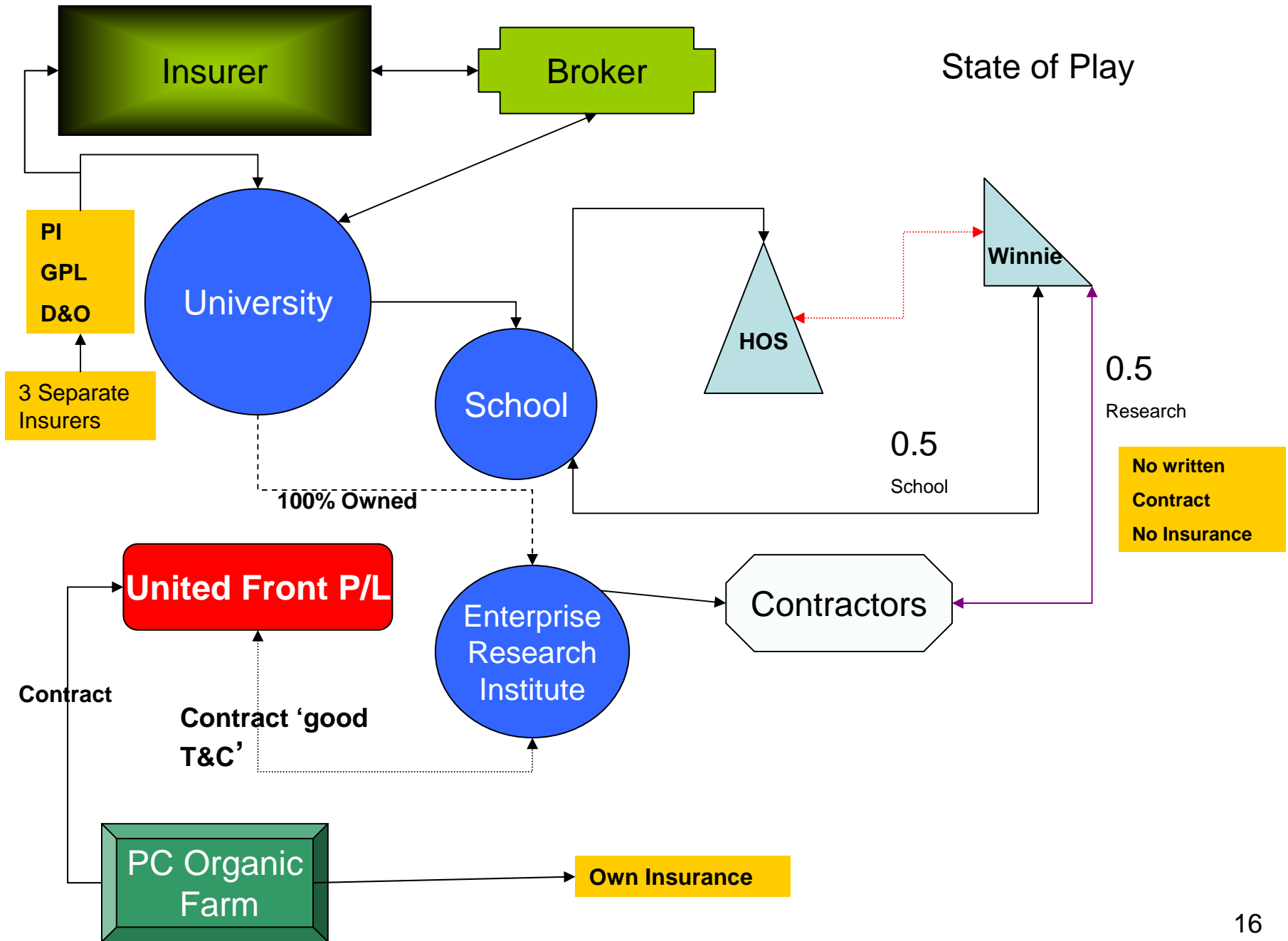
- David confronts Winnie and relationship sours

Current State



Current State





Response from GPL Insurer

- January 07 acknowledged notice of Adverse Event
- Action is filed by United Front against ERI and University June 07
- Insurer “reserves its position” and says – “Act as a prudent uninsured”
- University has lawyers
 - Action against the University by Prince Charles’ Organic Farm
 - ERI joined to the action by United Front
 - Action against both of them [in London]

GPL

- University actively negotiates with PC Organic Farm
- The action is settled to achieve:
 - Preservation of relationship with United Front
 - Protection of research \$\$\$
 - Assist important partner to contain their losses and manage Uni's own losses
 - Risk manage damage to all party's reputations

Meantime....GPL

- New facts come to light...
- NOT Winnie's seeds that caused problem in chutney but third party provider to United Front
- United Front sues third party onion provider and wins
- Uni seeks from insurer total loss (\$6M)
- What does insurer say?

GPL - Insurer's position

- You settled without a legal liability
- We did not exercise control of claims
- You exposed yourselves to that loss
- We offer \$1M without admission of liability

Professional Indemnity

- University (at behest of HoS) extends indemnity to Winnie as an employee (vicariously liable)
- University actively negotiates with United Front to commercially settle the action
 - Preservation relationship
 - Maintain financial sustainability
 - Contain United Front share market losses
 - Risk manage damage to all party's reputation

Response from PI Insurer

- January 07 acknowledged notice of AE
- Action is filed by United Front against ERI and University June 07
- Insurer 'DENIES' late notification
- University has lawyers
 - ERI and Winnie joined by United Front
 - Action against both of them in Australia

Meantime.....PI

- Over extended period of time Uni negotiates and settles with United Front for \$3M
- Uni incurs legal costs in Aust \$1M & \$2M in London (defence cost total \$3M)
- Total loss \$6M
- Deed of Settlement with Confidentiality and usual undertakings

Professional Indemnity

- Insurer's position
 - Material fact
 - known circumstance not notified
 - Not notified at the relevant time
 - Excluded under the policy
 - Liability is denied
- University has incurred significant legal cost
 - Maintain that a “mere legal liability” is not a notifiable event

Lessons

- What lessons can we learn from this Hypothetical?
 - Insured?
 - Insurer?
 - Management of risk?
 - Contracts?
 - Connection between
 - an event
 - a circumstance
 - A notifiable event
 - A material fact
 - Would it make any difference if the University had changed underwriters for the 2007 insurance program?
 - How do you make the horses drink? (after you have led them to the water.....)