

Minnesota Supreme Court Enforces Resident-Relative Exclusion in Homeowners Policy

Resident-relative exclusions do not frustrate the purpose behind the abolition of intrafamilial tort immunities, the Minnesota Supreme Court held, in rejecting a policyholder's argument that the exclusion was unenforceable as a matter of public policy. The court explained that precluding liability is different from precluding coverage.

The Case

A child was severely injured by a pet dog while living at his grandparents' house. The grandparents had a homeowners policy that contained an exclusion for bodily injury to "'you', and if residents of 'your' household, 'your' relatives and person(s) under the age of 21 in 'your' care or in the care of 'your' resident relatives."

The child's father, Poitras, filed a claim under the grandparents' homeowners policy. The insurer denied the claim under the resident-relative exclusion. Poitras then filed a declaratory judgment action.

Poitras did not argue that the exclusion was inapplicable, but only that it was void as against public policy. Both the trial and intermediate appellate courts enforced the exclusion.

The Minnesota Supreme Court's Decision

Poitras and the insurer each cited Minnesota high court authority that they contended addressed the validity of resident-relative exclusions. But the Minnesota Supreme Court found that those cases did not directly speak to the issue.

Minnesota began abolishing intrafamilial tort immunities in the 1960s. But abolishing immunities among family members, the court emphasized, is fundamentally different than requiring insurers to cover injuries to relatives that live with the insured. That's because when the court abolished judicially created immunities, it simply eliminated common law hurdles that the court itself created. In contrast, striking down the exclusion would require the court to interfere with a contract between parties. The court acknowledged that contractual provisions that contravene public policy may be stricken. But it found no basis for doing so here.

The court considered policy arguments for and against invalidating resident-relative exclusions, but said it was not the appropriate body to balance the competing policy arguments. And it found that the right to redress injuries or wrongs under the Minnesota Constitution does not guarantee access to a particular source of funds.

Thus, the Minnesota Supreme Court held that the resident-relative exclusion in the homeowners policy was enforceable.

The case is *Poitra v. Short*, No. A20-0491 (Minn. Nov. 24, 2021).

Texas Appellate Court Reaffirms "No Occurrence" Ruling in Claim Arising from Dumping of Debris on Property

The Texas Court of Appeals found that because the very placement of debris on property caused damage, there was no "occurrence" even if the insured mistakenly believed he was

authorized to dump the debris there. The injury was the natural and probable consequence of the act.

The Case

The City of Kosse hired Boatright to demolish the town's old high school. Boatright's friend, Garrett, asked if he could take some of the debris for erosion control. Boatright thought Garrett owned the property where he resided. But Garrett was simply a tenant on property that Roberts owned.

Boatright and Garrett ultimately placed 40 tons of debris on Roberts's property and damaged some fencing in the process. Roberts was less than pleased to discover the debris on his property and sued Boatright for illegal dumping. Roberts obtained a judgment against Boatright. A receiver was later appointed to liquidate non-exempt property for the benefit of Boatright's judgment creditors.

Before the demolition project began, Boatright purchased a liability insurance policy from Colony. Colony denied coverage because Boatright's actions were intentional, and thus, any injury did not result from an "occurrence." The receiver filed a declaratory judgment action seeking a declaration that Colony had to defend and indemnify Boatright. The receiver argued that because Boatright thought he had authority to dump debris on Roberts's property, any resulting harm was accidental.

The trial court ruled in favor of Colony. The Texas Court of Appeals affirmed.

The receiver moved for a rehearing.

The Texas Appellate Court's Decision

The policy defined "occurrence" as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions." The court observed that under

Texas law, an injury is accidental if, from the viewpoint of the insured, it is not the natural and probable consequence of the action that produces the injury. Two factors must be considered: (1) the insured's intent; and (2) the reasonably foreseeable effect of the insured's conduct.

Turning to the facts, the court found that Boatright intended to move the debris to Roberts's property and leave it there. Because the damage to the property was the very presence of the debris on the property, the court found that the damages were a reasonably foreseeable result of Boatright's intentional conduct. Also, the damages claimed were of a type that ordinarily flowed from the conduct.

The court ruled that the summary judgment evidence established, as a matter of law, that the placement of the debris on the property was no accident and, therefore, was not an "occurrence" under the terms of the policy. Boatright acted intentionally, even if he did not intend the result. And Boatright's mistaken belief that Garrett owned the property, the court said, was irrelevant to whether Boatright's actions were intentional.

Because there was no "occurrence," the court held that there was no coverage concerning the dumping of debris.

The court reached a different conclusion concerning the damaged fencing. The fence was damaged by the negligent use of a dump truck. That was caused by an "occurrence," but still not covered because of the policy's auto exclusion.

The court denied the motion for rehearing and affirmed the trial court's judgment.

The case is *Latray v. Colony Ins. Co.*, No. 07-19-00350-CV (Tex. Ct. App. Nov. 4, 2021).

Massachusetts Appellate Court Applies Uninsured Premises Exclusion

A Massachusetts appellate court held that an uninsured premises exclusion barred coverage for a homeowner's claim regardless of when the policyholder sold the uninsured premises.

The Case

In February 2017, Christopher and Dorothy Norton sold their home in Duxbury. More than two years later, the buyers sued Christopher Norton for intentional and negligent misrepresentation and breach of contract, claiming that he made false statements that induced them to purchase the property. Specifically, the complaint alleged that the Nortons executed a "Seller's Statement of Property Condition," representing that the home had no "water drainage problems" and that there were no "water," "seepage," or "dampness" issues in the basement. The complaint alleged that Christopher knew that these representations were false because he had learned from the home's previous owners that the basement had flooded in the 1990s and in 2005.

In January and March 2018, the basement flooded again, causing significant damage to the home and the buyers' personal property. As a result, the buyers had to purchase new personal property, raise the home by several feet, repair and replace the utility systems, "and do extensive engineering, architectural, construction and site work including changing the topography of the land to prevent more damage from future flooding."

Christopher tendered the defense of the buyers' lawsuit to Norfolk under a homeowners policy that Norfolk issued in September 2017 for the Nortons' new home in Sandwich. The policy, which was in effect when the Duxbury property flooded in 2018, provides coverage for personal

liability “[i]f a claim is made or a suit is brought against an ‘insured’ for damages because of ‘bodily injury’ or ‘property damage’ caused by an ‘occurrence.’” The coverage was subject to a number of exclusions, however, including one that applies to bodily injury and property damage arising out of an uninsured location.

Norfolk filed an action in Massachusetts state court seeking a judgment declaring that it had no duty to defend or to indemnify the Nortons. The trial court awarded judgment as a matter of law to Norfolk. The Nortons appealed.

The Nortons argued that the uninsured premises exclusion applied only to property owned during the policy period and that the term “owned” could not be read to encompass property previously owned by the insured. Under the Nortons’ reading, the uninsured premises exclusion would not apply because the Nortons no longer owned the Duxbury property when the flooding occurred.

Norfolk countered that what matters for purposes of the exclusion is whether the Nortons owned the property at the time of the conduct giving rise to the potential liability.

The Decision

The appeals court agreed with Norfolk. The court reasoned that if the Nortons still owned the Duxbury property when the flooding occurred (as a second home or rental property, for instance), the exclusion undoubtedly would have applied, and the policy would not have covered the damage. “It would be anomalous then,” the court stated, “to construe the exclusion not to apply simply because the Nortons sold the property before they made the claim for coverage.”

The court emphasized that the point of an uninsured premises exclusion is that the insurer has not been given the opportunity to inspect and assess the uninsured property and has not been

compensated to assume this additional risk. The court said it was undisputed that Norfolk did not have the opportunity to inspect and assess the Duxbury property.

The court also stated that, by Norton's logic, a later-issued homeowners policy on a different property would require the insurer to defend third-party claims arising out of any property that the insured formerly owned, and the insurer never inspected, as long as the event causing the bodily injury or property damage occurred during the policy period. The court noted that no reasonable insured or insurer would expect such a result.

For these reasons, the court affirmed the trial court's judgment granting Norfolk summary judgment.

The case is *Norfolk & Dedham Mut. Fire Ins. Co. v. Norton*, No. 20-P-1200 (Mass. App. Ct. Nov. 8, 2021).

Sixth Circuit Applies ERISA Exclusion to Action Against Trustee

The Sixth Circuit, applying Ohio law, found that an ERISA exclusion barred coverage for an action against a third-party trustee company and its president. The court rejected the policyholder's argument that the ERISA exclusion rendered the professional services coverage illusory.

The Case

Fiduciary Trust Services, Inc. provided independent third-party trustee services to employee stock ownership programs. It was owned and operated by its president, Thomas Potts. In 2010, Triple T Transport retained Potts to serve as a limited purpose trustee for its employee stock ownership plan.

In 2016, the U.S. Secretary of Labor sued Potts and his company over potential violations of the Employee Retirement Income Security Act of 1974 (“ERISA”). Potts and the company were accused of relying on a flawed stock valuation opinion which ultimately caused significant financial losses to Triple T Transport’s employee stock ownership plan.

Gemini Insurance Company intervened in the action seeking a judicial determination that it had no duty to defend Potts under the plain terms of consecutive annual insurance policies. Gemini cited policy exclusions that barred coverage for any claim arising out of any actual or alleged violation or failure to comply with ERISA. The district court granted Gemini summary judgment after concluding the policy explicitly disclaimed coverage of ERISA actions. Potts appealed.

The Decision

The Sixth Circuit affirmed. Applying Ohio law, the court held that the plain language of the policies excluded ERISA-related claims. The court noted that the policy exclusions “concretely identified the ERISA statute and specified in clear, exact terms that the policy does not apply to *any* claim or claim expenses arising out of an ERISA violation.” (Emphasis in original).

The court disagreed with Potts’s argument that excluding all ERISA claims would conflict with the policies’ definition of “professional services.” The policy provided “professional services” coverage for “the performance of providing services as a trustee for Employee Stock Ownership Plans for others for a fee.” The court noted that “there are professional services claims that could exist outside of the policies’ ERISA exclusion” such that the professional services coverage was not rendered illusory. For example, the court stated, Potts could give advice for employment stock ownership plans or executive compensation issues, which could lead to negligent misrepresentation claims that would be covered by Gemini’s policy.

Accordingly, the court held that the district court properly granted Gemini summary judgment.

The case is *Sec'y of Labor v. Potts*, Case No. 20-3856 (6th Cir. 2021)(Unpublished).



Rivkin Radler LLP
926 RXR Plaza, Uniondale NY 11556
www.rivkinradler.com
©2021 Rivkin Radler LLP. All Rights Reserved.