MASSACHUSETTS Lawyers Weekly

Insurance – Homeowner's policy – Uninsured premises

Supreme Judicial Court

By: Mass. Lawyers Weekly Staff March 4, 2020

Where (1) the holder of a homeowner's insurance policy also owned a cabin in Maine, and (2) four deaths occurred from carbon monoxide poisoning in the cabin when a portable generator the policyholder left at the cabin was improperly used indoors to power a small refrigerator, a policy exclusion for bodily injury arising out of an uninsured premises does not apply.

"This is a declaratory judgment action requiring us to interpret an exclusion in a homeowner's insurance policy. The plaintiff, Green Mountain Insurance Company, Inc. (insurer), sold a homeowner's policy to Mark Wakelin for property that he owned in Braintree. As is typically the case, the homeowner's policy provided him protection against personal liability as well as property damage. The policy also contained an exclusion for bodily injury 'arising out of a premises' owned by the insured but not insured under the policy. In the instant case, Wakelin owned an uninsured property, a cabin without electrical power in Maine. Tragically, four people — two of Wakelin's children and two of their friends — died from carbon monoxide poisoning when a portable generator Wakelin left at the cabin was improperly used inside the cabin to power a small refrigerator. The issue is whether the deaths caused by the improper use of the portable generator arose out of the uninsured premises as defined by the exclusion. We conclude that the portable generator does not constitute a condition of Wakelin's uninsured property and that, as a result, the victims' claims here do not arise out of that premises. For these reasons, the policy exclusion does not apply under the facts of this case, and the judgment of the Superior Court is affirmed. …

"… The only issue is whether the bodily injury arose from the uninsured premises or from tortious personal conduct. …

"Although this court has not yet interpreted the specific exclusionary language at issue, the Appeals Court and the United States Court of Appeals for the First Circuit have interpreted the words 'arising out of a premises' to mean 'arising out of a condition of a premises.' … Many other courts around the country have similarly interpreted this language. …

"Whether the personal liability in the instant case arises out of the uninsured premises presents a close question. We conclude that the generator does not constitute a condition of the uninsured premises, and the accident caused by the generator therefore cannot trigger the uninsured premises exclusion. The generator was portable, and Wakelin even spent more money on the generator so that it would be portable. It was also not hard wired into the cabin's rough electrical system to make it a part of the cabin. It was only 'attached' to the cabin by means of a chain so it would not be stolen — just like the ATVs, which are also Wakelin's personal property. Nor was it regularly used to provide electricity in the cabin. The generator was brought to the cabin to charge power tools used to complete the cabin's construction, and was not continuously run to power everyday appliances inside the camp. Although it was always kept at the Maine cabin, it was portable like the fire pit in [Vermont Mut. Ins. Co. v. Zamsky, 732 F.3d 37, 45 (1st Cir. 2013)]. …

"The generator here did not resemble any property condition that typically gives rise to personal liability, such as 'the loose board, the falling roof slate, the defect in the walkway, [or] the failure of outdoor lighting.' … Inspection of the property would not have revealed a correctable defect, as it would have had the generator been hard wired inside the house. Nor was the generator a permanent fixture of the cabin. …

"Further, it was Wakelin's failure to instruct his children on how to properly use the generator rather than any condition or defect on the property that is the basis for his potential liability here. … Wakelin could have been responsible for the very same omission elsewhere and still would have been covered by the policy. … By way of example, Wakelin could have lent the portable generator to a neighbor and failed to instruct him or her on how to properly use it, and had any harm resulted, he would have been covered under his policy for the same alleged tortious conduct that underlies the present case. …

"The generator that caused the tragic accident in this case when it was improperly used inside the cabin was not a condition of the uninsured premises. The accident therefore did not arise out of the uninsured premises, and the coverage exclusion at issue does not apply. The judgment of the Superior Court is therefore affirmed."

Green Mountain Insurance Company, Inc. v. Wakelin, et al. (Lawyers Weekly No. 10-040-20) (22 pages) (Kafker, J.) The case was heard by Mark A. Hallal, J., on motions for summary judgment, and a motion for entry of judgment was considered by him. Brian P. Harris for the plaintiff; J. Michael Conley for Charmaine Norris; William J. Doyle for Robert Powers; Peter E. Heppner, for Mark J. Wakelin, was present but did not argue; Kathy Jo Cook, Thomas R. Murphy, Kevin J. Powers, Paul R. Johnson and Lawrence A. Wind, for Massachusetts Academy of Trial Attorneys, amicus curiae, submitted a brief (Docket No. SJC-12760) (March 3, 2020).

Click here to read the full text of the opinion.

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