

February 6, 2009

**MINNESOTA COURT OF APPEALS FINDS AMBIGUITY IN AUTOMOBILE POLICY EXCLUSION
THROUGH NARROW INTERPRETATION OF THE PHRASE “FOR A CHARGE” AND THE
DISTINCTION BETWEEN AN EMPLOYEE AND AN INDEPENDENT CONTRACTOR**

In *Closner vs. Illinois Farmers Ins. Co.*, 2009 WL 22286 (Minn. Ct. App. January 6, 2009), an unpublished decision, the Minnesota Court of Appeals reversed the district court, holding that exclusions contained in an automobile policy were ambiguous and coverage was not barred under the personal automobile policy with Illinois Farmers.

Julie Closner was injured in a head-on collision with Fay Zimmerman. At the time of the collision, Zimmerman was delivering newspapers under a contract labeling her an independent contractor. Zimmerman’s insurance policy with Illinois Farmers included two liability coverage exclusions:

[1. No coverage when the vehicle] was used to carry persons or property for a charge.

[2.] no coverage for bodily injury damage arising out of the ownership, maintenance or use of any vehicle by any person employed or otherwise engaged in a business this exclusion does not apply to the maintenance or use of a:

(a) private passenger car,

However, this exclusion does apply to any vehicle:

1. While used in employment by any person whose primary duties are the delivery of products or services.

Illinois Farmers denied coverage based on the above exclusions. After obtaining a default judgment against Zimmerman’s Estate, Closner began a declaratory judgment action against Illinois Farmers. The district court found that the exclusions were unambiguous and granted Illinois Farmers summary judgment.

The Minnesota Court of Appeals reversed the district court. The appellate court reasoned that the first exclusion was ambiguous because the language “for a charge” could be subject to two interpretations: (1) a separate amount applied on a “per trip” basis; or (2) an amount that is included in the price of a newspaper to take into account the cost of delivery, but not charged separately. The court held that the phrase “for a charge” could apply under either scenario; therefore the term was ambiguous and the insured was not excluded from coverage because an ambiguity is resolved in favor of the insured.

The appellate court held the second exclusion also did not apply. The court reasoned the phrase “any person employed or otherwise engaged in a business” could apply to an employee or an independent contractor. However, the court noted the exclusion itself did not apply to the use of a private passenger car. Lastly, the court reasoned that the first two parts of the exclusion

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created a “dichotomy” which made the term “employment” ambiguous as to whether it applied to independent contractors and employees when used in the third section of the exclusion. Thus, coverage was available because the exclusion was ambiguous.

Although *Closner* is an unpublished opinion and lacks true precedential power, it provides important guidance for the future determination and interpretation of insurance exclusions. It also illustrates the lengths to which Minnesota Courts will go to find ambiguity in everyday terms in favor of coverage for an insured. This opinion further serves as guidance to those drafting exclusions for insurance policies to further delineate and define the difference between employees and independent contractors.

This letter, and other State of Minnesota, Court of Appeals and Supreme Court opinion updates, are now available in .pdf form on the News and Resources page of our Firm’s website: www.johnson-condon.com. If you have any questions, please contact us.

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