

Wisconsin Court of Appeals Concludes Watercraft Exclusion is Not Applicable Despite the Insured Contributing to Cost of the Watercraft Rental

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On August 10, 2010, the Wisconsin Court of Appeals issued a decision in *Ottmann, et al. v. American Family Mutual Ins. Co., et al.*, Appeal No. 2009 AP 2345 ("Ottmann") in which the court held that despite the insured contributing to the rental fee of the watercraft, the watercraft exclusion in the homeowner's insurance policy did not bar coverage.

In *Ottmann*, one of the defendants, Rita Kulinski, rented a jet ski. Rita then asked her nephew, a 16 year old minor at the time, if he would like to operate the jet ski. While operating the jet ski, the jet ski collided with the plaintiff's jet ski resulting in the plaintiff's injuries. Despite the fact Rita's sister, Renee, (the insured and the minor's mother) agreed to contribute \$50.00 towards the rental of the jet ski the court nevertheless found that the watercraft exclusion did not bar coverage.

American Family issued a homeowner's policy to Renee and her minor son. The watercraft exclusion in that policy stated "Watercraft: We will not cover bodily injury or property damage arising out of the ownership, supervision, entrustment, maintenance, operation, use, loading or unloading of a watercraft...(2) with inboard or inboard-outdrive motor power of more than 50 hp *rented to any insured.*" In reversing the trial court's decision that the exclusion barred coverage, the court of appeals concluded that while it was obvious that the rental was "a commercial transaction entered into for profit" by Rita and the rental company, the court remained unconvinced that the minor's mother also rented it. The court stated "we are not convinced that a reasonable insured would understand that by contributing to the cost of the jet-ski that was rented to another person... the insured could be said to have "rented" the jet-ski for herself." Because the court found that the jet-ski had not been "rented to" the insured, Renee, the court held the watercraft exclusion did not apply. Accordingly, the court reversed and remanded the trial court's decision for the trial court to reconsider the plaintiff's motion for declaratory judgment in light of the fact that the watercraft exclusion did not bar coverage. Judge Fine issued a dissenting opinion.

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