

## Policy Exceptions – A Tale of Two Interpretations

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*Robert Bolger v. Massachusetts Bay Insurance Company, 2022AP742*

In *Bolger*, Massachusetts Bay Insurance Company (MBIC) issued a homeowner's insurance policy to Bret and Amy Achtenhagen that covered their primary home and further provided personal liability and medical payments to others coverage. The policy contained an exclusion for bodily injury "arising out of the ownership, maintenance, use, loading or unloading of ...motorized land conveyances ...owned or operated by ...an 'insured,'" subject to an exception for "[a] vehicle or conveyance not subject to motor vehicle registration which is" "[u]sed to service an 'insured's residence.'"

After a utility terrain vehicle (UTV) accident near the Achtenhagens' second home, Robert Bolger filed a bodily injury lawsuit against the Achtenhagens' son and numerous entities, including MBIC. MBIC denied coverage and filed a motion for declaratory judgment arguing that it had no duty to defend and indemnify the insureds. The circuit court denied MBIC's motion for declaratory judgment and held the exception to the exclusion was ambiguous. The issue was whether the exception required use of the UTV in service of the insured's residence at the time of the injury or simply required use of the UTV in service of the insured's residence at some point, but not necessarily at the time of the injury. A second issue was whether the "insured's residence" was the property listed in the declarations page, or any residence. Before trial, MBIC stipulated to a judgment in the amount of \$150,000 conditioned on the outcome of this appeal.

The Court of Appeals affirmed the circuit court's decision. The Court of Appeals determined that the policy exception was subject to at least two interpretations. The Court found it "unclear from the exception's language, '[u]sed to service,' whether liability coverage exists only if the occurrence takes place while a conveyance is servicing 'an 'insured's' residence,' or if coverage exists regardless of where the occurrence takes place provided the conveyance at one point serviced 'an 'insured's' residence.'" The Court reasoned that without the language present in other exceptions that limited exceptions to particular geographic locations or a particular use at the time of bodily injury, a reasonable insured could interpret the exception to apply anywhere for any location or purpose as long as the UTV was once "used to service an 'insured's residence.'" Because the Court found the exception ambiguous, it construed the policy against MBIC and in favor of the reasonable expectations of the insured.

This decision is recommended for publication.

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