



April 27, 2011

**RE: RECENT OHIO SUPREME COURT DECISION INVOLVING CLAIMS “ARISING OUT OF” PREMISES**

Homeowners policies typically contain an exclusion for claims “arising out of” any premises owned by the insured other than the insured location. The Ohio Supreme Court recently interpreted the scope of this type of exclusion in *Westfield Ins. Co. v. Hunter*, Slip Opinion No. 2011-Ohio-1818. To obtain a copy of the decision, click the link below.

<http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2011/2011-Ohio-1818.pdf>

The relevant facts are as follows. The Hunters resided in Ohio. Their home was insured by Westfield under a homeowners policy. The policy excluded coverage for claims “arising out of” premises owned by an insured that are not an insured location. The Hunters owned a farm in Indiana, which was insured by another insurer. Two minor children were involved in an accident at the farm arising out of an ATV driven by the Hunters’ granddaughter, resulting in injury to the other child. The injured child’s parents brought suit, and included a claim against the Hunters, alleging the Hunters knew of their granddaughter’s reckless/negligent tendencies, and had the ability and duty to exercise control over her. The Court specifically noted the Plaintiff’s complaint included no allegation that a condition on the property contributed to the accident at the farm.

Based upon these facts, the court set forth its syllabus (rule of law) as follows:

An exclusion in a homeowner’s insurance policy for claims “arising out of” premises owned by the insured other than the insured location excludes coverage for premises-based liability claims, such as claims that arise from the quality or condition of the premises. Moreover, although the exclusion does not bar coverage of claims that arise from the insured’s alleged negligence if that negligence is unrelated to the quality or condition of the premises, it does exclude coverage for claims based upon the

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insured's ownership of the property upon which the injury occurred.


Although the Court formulated the rule of law applicable to this type of policy exclusion, the court reasoned there were insufficient facts to determine whether or not the exclusion applied to the claims against the Hunters. The Court offered the following explanation in support of its decision.

If the Whickers' complaint is based on the theory that the Hunters failed to properly supervise Ashley while she was on the Hunters' property and that the failure gave rise to the Terrell's injuries, then the exclusion does not bar coverage in this case. But if the theory of negligent supervision is a subterfuge to avoid the "other premises" exclusion because the Whickers' claims are based on the Hunters' ownership of the property, then the coverage is not available. On the scant record before us, we cannot make that determination. Accordingly, we remand this cause to the trial court for further proceedings to ascertain the nature and factual basis for the Whickers' claims against the Hunters. On remand, the trial court should determine whether the Whickers' theory of liability is that the Hunters breached a personal duty that the Hunters assumed for the care and control of Terrell and Ashley, in which case the exclusion would not apply, or whether the Whickers' claims are based only on the fact that the Hunters owned the property where the injuries occurred, in which case the exclusion does apply.

*Id.* ¶ 27. It should be noted of the seven justices on the Ohio Supreme Court, three of them dissented from the majority opinion.

Should you have any further questions regarding the decision or its implications, please do not hesitate to contact our firm.

Yours truly,



James P. Nolan, II