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Sproull v. State Farm Fire and Casualty Company

Jarret Sproull suffered wind damage to his residence on or about December 28, 2015, and timely submitted a property damage claim to State Farm requesting payment for the loss. On or about January 23, 2015, State Farm sent an adjuster to inspect the damage to Sproull's property. State Farm determined that Sproull had sustained a covered loss. The adjuster determined that the building sustained a loss with a replacement cost value (RCV) of $1711.54.

The policy provides:

"COVERAGE A—DWELLING

1. AI—Replacement Cost Loss Settlement —Similar Construction.

*a. We will pay the cost to repair or replace with similar construction and for the same use on the premises shown in the Declarations, the damaged parts of the property covered ***, subject to the following:*

(1) until actual repair or replacement is completed, we will pay only the actual cash value at the time of the loss of the damaged part of the property, up to the applicable limit of liability shown in the Declarations, not to exceed the cost to repair or replace the damaged part of the property;

(2) when the repair or replacement is actually completed, we will pay the covered additional amount you actually and necessarily spend to repair or replace the damaged part of the property, or an amount up to the applicable limit of liability shown in the Declarations, whichever is less;

*(3) to receive any additional payments on a replacement cost basis, you must complete the actual repair or replacement of the damaged part of the property within two years after the date of loss, and notify us within 30 days after the work has been completed ***."*

The policy did not define "actual cash value."

In calculating ACV, State Farm began with the RCV and then subtracted Sproull's $1000 deductible and an additional $394.36, including taxes, for depreciation. Sproull thus received an ACV payment from State Farm for $317.18. Sproull claimed that he was underpaid on his ACV claim because State Farm depreciated labor, which is intangible and thus not subject to wear, tear, and obsolescence. Sproull says labor may not be depreciated because it is not susceptible to aging or wearing and its value does not diminish over time.

Sproull alleged in the complaint that State Farm uses a program called "Xactimate" to calculate replacement and repair costs. The default setting is to apply depreciation to materials only when estimating structural repairs. However, State Farm's adjuster set the program to also depreciate nontangible items such as labor.

The written estimate provided to Sproull showed 26 line-item repairs. Depreciation for materials and labor was applied to seven of the line items—painting the walls in the dining room, kitchen, hallway, and living room; painting the ceilings in the dining room and kitchen; and removing and replacing fiberboard in the dining room. Depreciation was not applied to other items, such as sealing and priming the surfaces to be painted, drywall work, and removing and replacing insulation.

Sproull alleged that State Farm conceals its practice of depreciating labor from its policyholders in several different ways. First, State Farm does not state in its written estimates that the Xactimate software has been set to depreciate non-tangible items such as labor. Second, State Farm does not separate labor and materials in the estimates provided to policyholders. Third, for obvious labor-only charges such as debris removal or roof tear-off charges, State Farm does not depreciate labor. Sproull alleged that State Farm does this to help avoid detection of labor depreciation in other line items.

Is State Farm entitled to depreciate labor? Why or why not?

American Bankers Insurance Co. v. Shockley

SFC is a company that owns St. Charles Farms (SFC). SFC operated a horse farm and equestrian center in St. Charles, Illinois. SFC's business activities included maintaining, training, and boarding horses. It also provided riding lessons for a fee. SFC hosted shows and events both on and off its property. One type of off-site event was trail riding, which had previously occurred at different forest preserves. SFC held off-site events about once a month or less, with trail-riding events approximately three times a year. Sometime during the operation of the business, SFC attended a festival at the Kane County Fairgrounds.

On November 11, 2016, Ashley Ratay, an employee of SFC, transported horses, equipment, and an SFC golf cart from the farm to Barrington Hills Riding Center. The riding center is located approximately fifteen miles away from SFC's property.

While at the riding center, Ratay was responsible for supervising those riding SFC horses. She did so while driving the SFC golf cart. At some point, Shockley was a passenger in the golf cart. With Shockley in the passenger seat, Ratay used the golf cart to chase a horse. She quickly drove the cart off the mowed path and onto a grassy field. The cart hit uneven ground, causing Shockley to fly out of the vehicle and land on the ground. Ratay ran over his leg with the golf cart.

Shockley sued Ratay and SFC, who turned the case over to their insurer, American Bankers. American Bankers had issued a "Farmowner Policy" to SFC with certain additional coverages. American Bankers said it had no duty to defend or indemnify SFC and Ratay for two reasons.

The first reason, American Bankers said, is the insuring clause and its requirement of connection to the "insured premises":

> *"We" pay all sums which an "insured" becomes legally obligated to pay as "damages" due to "bodily injury" or "property damage" to which this insurance applies. The "bodily injury" or "property damage" must be caused by an "occurrence" and arise out of the ownership, maintenance, or use of the "insured premises" or operations that are necessary or incidental to the "insured premises".*

Second, even if the insuring clause is met, there is an exclusion for motor vehicle liability unless it

> *arises out of: ... a "motorized vehicle" which is designed only for use off public roads and which is used to service the "insured premises." However, this coverage does not apply to "bodily injury" or "property damage" which results from a "motorized vehicle" while used for recreational purposes away from the "insured premises".*

Does American Bankers have to defend SFC and Ratay? Does American Bankers have to indemnify them? Why or why not?

Chadwell v. New Jersey Manufacturers Insurance Co.

Chadwell and his family have lived in the insured residence since 1981, and NJM has insured it since 1986. Chadwell discovered the mold on September 18, 2007, when he removed aluminum siding revealing mold, mildew and water damage on the underlying wood siding of two exterior walls. According to Chadwell, the "best of the many explanations" for the condition is that ice filled the gutter along those walls at some point and forced water to travel (1) out of the back of the gutter, (2) along the underside of the roof overhang toward the wall, and (3) down, with the aid of gravity, between the aluminum siding and the original cedar siding of those walls.

Chadwell's NJM policy was an HO-2 broad form with a "Limited Fungi, Wet or Dry Rot, or Bacteria Coverage." It included the following language:

> [This coverage only applies] when such loss or costs are a result of a Peril Insured Against that occurs during the policy period and only if all reasonable means were used to save and preserve the property from further damage at and after the time the Peril Insured Against occurred.

NJM refused to pay for the loss, claiming that the perils insured against under this policy did not include ice damming.

Who wins? Why?

Malzberg v. Josey

On June 30, 2017, Malzberg enrolled with defendant Portier, LLC (Portier) to use his personal vehicle—a motorcycle—to deliver food. Portier generates leads to independent food delivery service providers— the drivers—through a mobile phone application known as Uber Eats. The Uber Eats app allows food delivery service providers and restaurants to connect with each other so that they can fulfill orders placed by consumers.

Malzberg was required to sign a "Technology Services Agreement" with Portier. Section 8.3 of that agreement provides:

> *You understand and acknowledge that your own insurance policy (e.g., automobile or other liability insurance policy) may not afford liability, comprehensive, collision, medical payments, personal injury protection, uninsured motorist, underinsured motorist, damage to property in your care, custody and control, or other coverage for the Delivery Services you provide pursuant to this Agreement. If you have any questions or concerns about the scope or applicability of your own insurance coverage, it is your responsibility, not that of [Portier], to resolve them with your insurer(s).*

Section 8.4 of the Services Technology Agreement further provides that:

> *[Portier] may maintain during the term of this Agreement insurance related to your provision of Delivery Services as determined by [Portier] in its reasonable discretion, provided that [Portier] and its Affiliates are not required to provide you with any specific insurance coverage for any loss to your Transportation Method or injury to you.*

On August 17, 2017, Malzberg was in the process of making a food delivery for Uber Eats when a vehicle driven by defendant Caren L. Josey (Josey) made a left turn onto the Route 17 entrance ramp in Hackensack and collided with Malzberg's motorcycle. Malzberg was thrown from the motorcycle and sustained significant injuries requiring multiple surgeries.

Josey was insured by CURE Auto Insurance with bodily injury liability coverage limited to $15,000 per person and $30,000 per accident. Malzberg's injuries exceeded the limits of Josey's personal auto insurance policy.

Portier had procured a business auto insurance policy from James River. That policy provides in pertinent part, "[w]e will pay all sums an `insured' legally must pay as damages because of `bodily injury' or `property damage' to which this insurance applies, caused by an `accident' and resulting from the ownership, maintenance or use of a covered `auto.'" The James River policy defines an "insured" to include "Delivery Drivers" who have entered into a contract to use the "UberPartner Application" and who have logged into the "UberPartner Application." Importantly, however, the James River policy does not provide underinsured motorist benefits.

The statute in question is part of the Model Transportation Network Company Act. It requires that:

> *Whenever a transportation network company driver is providing a prearranged ride, the transportation network company driver, transportation network company, or any combination of the two shall maintain the following insurance coverage:*
>
> > *(1) primary automobile liability insurance in the amount of at least $1,500,000 for death, bodily injury, and property damage;*
> >
> > *(2) primary automobile insurance for medical payments benefits in an amount of at least $10,000 per person per incident, which shall only apply to and provide coverage for the benefit of the transportation network company driver; and*
> >
> > *(3) uninsured and underinsured motorist coverage in an amount of at least $1,500,000.*

The Model Transportation Network Company Act also defines the following terms:

> *"Transportation network company" means a corporation, partnership, sole proprietorship, or other entity that is registered as a business in the State or operates in this State, and uses a digital network to connect a transportation network company rider to a transportation network company driver to provide a prearranged ride....*
>
> *"Transportation network company driver" or "driver" means a person who receives connections to potential riders and related services from a transportation network company in exchange for payment of a fee to the transportation network company, and uses a personal vehicle to offer or provide a prearranged ride to a rider upon connection through a digital network controlled by a transportation network company in return for compensation or payment of a fee.*

"Transportation network company rider" or "rider" means a person who uses a transportation network company's digital network to connect with a transportation network company driver to receive a prearranged ride from the driver using the driver's personal vehicle.

Does James River have to cover Malzberg's underinsured motorists claim? Why or why not?

McGee v. Zurich American Insurance Co.

Zurich issued a general insurance policy to Underwood Bros, Inc., doing business as AAA Landscape ("AAA Landscape"). The policy provides business auto liability coverage for bodily injury or property damages caused by an accident "resulting from the ownership, maintenance or use of a covered `auto.'" The policy defines "insured" as "[a]nyone . . . using with your permission a covered `auto' you own."

In 2012, AAA Landscape assigned a company vehicle to Elizabeth Foutz, an employee. Three years later, Foutz was involved in a car accident with McGee. Although McGee was found at fault for the accident, Foutz was cited for driving while intoxicated. After McGee asserted a claim against Foutz, Zurich declined coverage, concluding that Foutz failed to qualify as an insured under the policy, because she had exceeded any permissible use by driving while intoxicated. Foutz assigned her rights to McGee, and McGee sued Zurich for breach of contract and bad faith.

Foutz was permitted to use the company vehicle for personal errands after work. Foutz testified that the company vehicle was her "only source of transportation," that "AAA [Landscape] knew that" to be the case; that "if [Foutz] needed the vehicle to run errands, go to the grocery, something quick after work, it was okay" with AAA Landscape, and that Foutz's supervisor was aware of her use of the company vehicle to run errands. Foutz further testified that AAA Landscape employees routinely used company vehicles "for personal errands after work," and that AAA Landscape's executives were "well aware of that."

Zurich argues that Foutz's use was non-permissive because she did not have express or implied permission to operate a company vehicle while intoxicated. There is no evidence that AAA Landscape ever gave Foutz permission to operate the vehicle while intoxicated.

Was Foutz a permissive user under Zurich's policy?

Pins v. State Farm Fire and Casualty Co.

Judson Pins engaged in a sexual affair with the wife of Gery Baar. Baar sued Pins, asserting claims for alienation of affections, intentional infliction of emotional distress, and negligent infliction of emotional distress.

Pins tendered the lawsuit to State Farm Fire and Casualty Company, asserting that State Farm must defend and indemnify Pins under his Personal Liability Umbrella

Policy in effect at the time. State Farm declined to defend after local counsel concluded that the policy did not cover Baar's claims.

Pins hired his own attorney, settled with Baar, and commenced this damage action against State Farm for breach of its contractual duty to defend, bad faith, and declaratory relief.

Pins' lawyer says that the complaint involves negligence, because "it is possible, indeed likely, that Pins did not intend to break up Baar's marriage by having sexual relations with Baar's wife."

State Farm says that "alienation of affection" is an intentional tort. In other words, when Baar said he lost the benefit of his spousal relationship, he could not win on that claim unless he proved that Pins intended to cause those specific injuries. Therefore, the claim does not involve an "accident," or is specifically excluded by the language about injuries "expected or intended by" Pins.

Who wins?

Goldberger v. State Farm

Joel and Kim Goldberger own residential rental property in Flagstaff, insured by State Farm Fire and Casualty Company ("State Farm") under a rental dwelling policy.

The Goldbergers filed a claim asserting their tenant "allowed" feral cats "to access" the property and the cats then caused approximately $75,000 of "accidental damage." State Farm denied the claim, asserting "feral cats are domestic animals and therefore the damage was not covered under the Policy." State Farm based its denial of coverage on subsection 1.N of the Policy ("Exclusion"), which provides that accidental losses caused by "birds, vermin, rodents, insects or domestic animals" are not covered.

The Policy does not define "domestic animals." The parties offer multiple definitions. The Goldbergers contend the term could reasonably refer to either (1) animals belonging to a broader class of animals that have been domesticated at some point in history (the "species-based definition") or (2) animals that are, in fact, kept by a person for any of various purposes, including as pets (the "individualized definition").

State Farm argued for the species-based definition and offered up the argument that the phrase can only reasonably refer to "dogs [and] cats, as well as a broader class of animals reasonably expected to be found in or around a dwelling." State Farm asserted that regardless of the outer limits of what "domestic animals" means, it includes all dogs and cats.

Is the loss covered or excluded?