American Educational Institute

CLAIMS LAW UPDATE

A SUPPLEMENT TO CLAIMS LAW COURSES IN CASUALTY, PROPERTY, WORKERS' COMPENSATION, FRAUD INVESTIGATION, AND AUTOMOBILE

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AEI CLAIMS LAW QUIZ

HOW BROAD IS THE AUTO EXCLUSION?

[*Ref. Homeowners Liability Coverages, Para. 2.02*]

FACTS: Sixteen-year-old Athena was driving a vehicle owned by her mother, Lori, when she was involved in an accident with another vehicle. The driver of the other vehicle and one of the passengers were killed and another passenger was injured. Prior to the accident, Athena was talking/texting on her cell phone with Lori.

Suit was filed against both Athena and Lori on behalf of the estates of the deceased and by the injured passenger. The claimants alleged that Athena was negligent because she was using her cell phone while driving. The claimants also alleged that Lori was negligent because she was talking/texting with Athena while she was driving and this distracted Athena.

Grange Insurance Co. provided both a personal auto policy and a farmowners policy (providing personal liability coverage similar to that of a homeowners policy) that insured both Lori and her daughter. The claimants argued that Grange owed coverage under both policies. The insurer filed a declaratory judgment action seeking a determination that coverage was excluded under the farmowners policy. The auto exclusion in that policy barred "liability coverage for injuries arising out of the maintenance, use, or operation of any motor vehicle by any insured or any other person." The claimants then moved for summary judgment, arguing that Lori's negligence was separate and distinct from Athena's operation of the vehicle and, therefore, the auto exclusion in the farmowners policy did not apply to bar coverage. The insurer also moved for summary judgment, arguing that there was no coverage under the farmowners policy because the auto exclusion did apply.

The trial court granted summary judgment to the insurer, and the decision was appealed.

QUESTION: Does the auto exclusion in the farmowners policy apply to bar coverage in this case when there was a separate and distinct act of negligence that preceded the auto accident?

ANSWER: Yes. In *Grange Insurance Co. v. Riggs, et al*, 185 NE3d 689 (Ohio App. 2022), the court found that the auto exclusion applied notwithstanding Lori's separate and distinct negligence in distracting her daughter. The court held that the phrase "arising out of" should be interpreted broadly to mean originating from, stemming from, or resulting from. Using this broad interpretation of the phrase, the court concluded that the accident resulted from the negligent operation of the automobile, and the exclusion applied to bar coverage.

The claimants argued that the court misinterpreted the term "arising out of." Their argument was that the term was synonymous with "originating from," and the accident originated from the distraction created by Lori's negligence, which in turn caused Athena's negligent operation of the vehicle. The court, however, found that this interpretation was too narrow. Looking to earlier cases, the court concluded that the term "arising out of" was unambiguous, and meant to originate from, to stem from, or to result from. The court stated that "the term 'arising out of' as used in the auto exclusion is not limited strictly to the act of negligence the injuries 'originated from,' but also extends to bodily injuries which 'resulted from' the use of a motor vehicle."

The court also considered whether Lori's negligence was an independent concurrent cause of the claimed injuries, such that it would not be subject to the auto exclusion. Quoting from an earlier case, the court stated:

> The preliminary or concurrent act contributing to the loss is independent of the excluded cause only where the act (1) can provide the basis for a cause of action in and of itself and (2) does not require the occurrence of the excluded risk to make it actionable.

Applying this test to the facts at hand, the court stated that there was no way Lori's negligence could be the basis of a cause of action on its own, absent Athena's negligent operation of the vehicle. Without Athena's negligent operation of the vehicle, the accident could not have happened. The court went on to state the general rule:

> When the vehicle is a nonessential element of the cause of the injuries and the actual cause was a wholly independent, non-related act, the injury will be removed from the scope of the "auto exception." Conversely, when the use of the automobile is intertwined with the negligence causing the injuries, then the "auto exception" will be held to apply.

In affirming the lower court's grant of summary judgment to Grange, the court stated:

> In the instant case, the vehicle was not a nonessential element of the cause of the injuries. Lori's negligent distraction of Athena was not a wholly independent, non-related act, because but for the fact Athena was driving at the time, Lori's conduct would not have been negligent, nor would the injuries have resulted from Lori's conduct. The use of the automobile in the instant case is inextricably intertwined with the negligence causing the injuries, and thus the auto exclusion in the farmowner's policy issued by Grange applies.

CONCLUSION: Liability that arises out of the use of a motor vehicle is covered by insurance specifically written to protect against that risk. Homeowners, farmowners, and commercial liability policies typically include a motor vehicle exclusion that bars coverage for injuries "arising out of" risks that are causally related to the use of a motor vehicle. Many courts have broadly defined the term "arising out of" in the context of an auto exclusion to mean to originate from, to stem from, or to result from. Courts have found this exclusionary language to be clear and unambiguous and have held the exclusion applicable in cases like this one.