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Federal Judge Holds Typographical Error in Policy Precludes Application of Exclusion

In Auto-Owners Ins. Co. v. Krammerer, 2019 WL 1875591 (D. Minn. Apr. 26, 2019), a person caring for a homeowner's dogs sued the homeowner after she was bit by one of the dogs, and the homeowner sought insurance coverage under their homeowners policy. Auto-Owners agreed to defend the homeowner against the injured person's claims under a reservation of rights and filed a separate lawsuit to obtain a declaration that no coverage was owed under the policy. Based on an apparent typographical error in the policy, the Court held that coverage was owed.

As is common with modern homeowners policies, the policy at issued used bold face type to identify defined terms throughout the policy. The policy provided personal-liability coverage for "any insured" and defined "insured" to mean not just the homeowner but also "any person legally responsible for animals . . . owned by [the homeowner] . . . with respect to those animals." But the policy also contained an "intra-insured" exclusion that read: "Coverage E – Personal Liability does not apply . . . to bodily injury . . . to any insured," with the term insured in plain rather than bold text.

Auto-Owners argued that the exclusion applied to bar coverage for the injured person's claims against the homeowner because the injured person was legally responsible for the homeowner's dog at the time of the incident and therefore both an "insured" under the policy and an "insured" for purposes of the exclusion. In other words, Auto-Owners argued that it had inadvertently failed to bold the term "insured" in the exclusion and that the terms should be interpreted to mean the same thing. The injured person, who intervened in the declaratory judgment action, seized on the error and argued that the policy unambiguously intended the word "insured" to have different meanings depending on whether it appeared in bold or plain text. Despite the clear intention of the intra-insured exclusion particularly in dog-bite cases such as this, the Court determined that the policy was ambiguous and construed it against Auto-Owners and in favor of coverage.

In so ruling, the Court rejected Auto-Owners' argument that the bold face type in the policy was a matter of courtesy and convenience and noted that the intra-insured exclusion was not the only place in the policy in which the term "insured" appeared in plain text (in addition to the policy declarations, the Court identified one other spot in the policy that "insured" was not bolded). The Court further reasoned that neither Minnesota's dog-bite statute—Minn. Stat. § 347.22—nor cases involving similar fact patterns justified treating the injured person as an insured for purposes of the exclusion because the statute does not say anything about insurance coverage and the cases involved policies that did not contain the same typographical error. Finally, the Court held that it was reasonable to interpret

the word “insured” in the exclusion to mean only the named insured or policyholder and that the interpretation would not lead to an absurd result.

While there is a chance the Eighth Circuit will reverse the district court’s decision if Auto-Owners appeals, the decision will stand as a good reminder that insurers and their attorneys should constantly be reviewing their policy forms to address typographical errors that could be construed to create coverage where it is not intended. We have encountered similar issues, including indentation issues, in other sections of commonly used policy forms and have seen how a simple error such as the one at issue in this case can lead to coverage for a risk that was clearly not contemplated when the policy was issued.

If you have questions regarding the decision or any other insurance-coverage issues, please contact Dale O. Thornsjo , Lance D. Meyer , or one of the other members of our Firm's Insurance Coverage Practice Group at (952) 831-6544.