



LAW NOTES

from the Law Offices of
Kay & Andersen, LLC

January, 2011

What Every Insurer Should Know

ABOUT COVERAGE FOR ACCIDENTS INVOLVING FAMILY MEMBERS OF INSURED

Insurance companies are occasionally presented with claims in which the injured party is related to or resides with the named insured. This circumstance was recently revisited by the Wisconsin Court of Appeals in *Olson v. Barron Mutual Insurance Company*, Appeal No. 2010AP663 (December 7, 2010), found at

<http://www.wicourts.gov/ca/opinion/DisplayDocument.html?content=html&seqNo=57373> (recommended for publication).

This case involved an ATV accident in which Trevor Olson was injured while visiting his father, William. Trevor's parents were divorced and at the time of the accident, Trevor was staying with his father during a designated period of physical placement. Trevor and his mother sued William and his insured, Barron Mutual, alleging that William negligently permitted Trevor to operate the ATV and failed to adequately supervise Trevor. Barron Mutual moved for summary judgment on the basis that Trevor was an insured whose accident was excluded under the policy because he was a resident of William's household and because he was in William's care at the time of the accident. Trevor argued that the exclusionary language was ambiguous because a reasonable insured would understand the policy excluded coverage of bodily injury only to those insured who also resided on the insured premises. The Court of Appeals affirmed the circuit court's summary judgment dismissal of Barron Mutual. The Court of Appeals determined that the only reasonable

interpretation of the exclusionary language was that it excluded liability coverage for bodily injury to two distinct groups: (1) any insured; and (2) persons other than insureds who reside on the insured premises. Trevor's interpretation would make the exclusion's reference to "any insured" superfluous. Although Trevor offered an affidavit from an English university professor opining that the exclusion was ambiguous, the Court of Appeals gave it no consideration. "The interpretation of an insurance policy is a question of law for the court to decide, ... not an academic exercise in sentence construction. An English professor's interpretation of policy language is not determinative." *Id.*, ¶ 10. The Court of Appeals was also mindful that this type of policy was intended to cover liability for injury to third persons and not to protect family members from negligent acts of other family members. *Id.*, ¶ 12. This case reiterates that insurance carriers should carefully examine the relationship between a claimant and an insured in light of the relevant policy language as part of their coverage analysis.

Law Offices of Kay & Andersen, LLC is recognized for securing favorable verdicts and settlements for insurance companies and their insureds and has received an AV rating from Martindale-Hubbell. We are also proud to be listed in *Best's Directory of Recommended Insurance Attorneys and Adjusters*. Feel free to contact us with any of your insurance defense needs.

Law Offices of Kay & Andersen, LLC

One Point Place, Suite 201

Madison, WI 53719

Phone: (608) 833-0077

Fax: (608) 833-3901

Web Site: www.kayandandersen.com

E-mail: law@kayandandersen.com

Randall J. Andersen

Robert A. Mich, Jr.

LAW NOTES is published quarterly. If you have a special legal issue you would like to see covered in a future LAW NOTES by Law Offices of Kay & Andersen, LLC, feel free to contact us.