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September 21, 2021

TLSS Partner Eric D. Suben Obtains Summary Judgment Based on Absolute Auto Exclusion

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The coverage action arose from an underlying lawsuit in which attendees of an annual motorcycle rally in upstate New York alleged they are injured when a turning vehicle struck their motorcycles on the roadway outside the event. Underlying plaintiffs alleged that the property owner's failure to have proper traffic controls caused or contributed to the incident. Coverage was denied to the property owners based on the CGL policy's "absolute auto exclusion," stating that coverage does not apply to any claim arising out of the ownership, maintenance, or use of a motor vehicle. Unlike the standard form auto exclusion, the exclusionary wording omitted any requirement that the vehicle be owned or operated by the insured.

In the ensuing coverage litigation, TLSS, on behalf of the insurer, moved for summary judgment based solely on the "absolute auto exclusion," arguing it was unambiguous and enforceable based on undisputed evidence establishing the underlying action arose out of a traffic accident. Defendants opposed the motion, arguing that the exclusion was ambiguous based on prior case law declining to apply a differently worded exclusion to a claim based on a hazardous condition of the insured's premises. They further argued that the exclusion should not be enforced because they could not have acquired automobile insurance to cover accidents caused by vehicles in which they had no insurable interest. TLSS argued in reply that both the policy wording and the underlying facts were distinguishable; and that defendants had other insurance for the incident.

The court granted Covington's motion in full, reasoning that other New York courts have found the exclusionary wording unambiguous where its plain meaning "focuses on the connection between a vehicle and the injury, not between a vehicle and the insured." Regarding the availability of other insurance, the court specifically rejected defendants' argument, reasoning that while they may not have been able to get *automobile* insurance on vehicles they did not own or drive, they did have event-specific insurance for the motorcycle rally. Based on this reasoning, the court granted TLSS' motion in full, holding there was no duty to defend or indemnify under the CGL policy.

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