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Seventh Circuit Addresses Operations Exception to Auto Exclusion in Commercial General Liability Policy

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In *Atain Specialty Ins. Co. v. Watson*, 2024 U.S. App. LEXIS 5782, the United States Court of Appeals for the Seventh Circuit addressed coverage under an errors and omissions policy and a commercial general liability policy for an accident involving an insured truck with an attached woodchipper. Per the alleged facts, the claimant was walking when she was struck by the insured vehicle as it was exiting the insured's property to dump a load of tree limbs and trunks.

The involved errors and omissions policy excluded coverage for "bodily injury" arising out of the use of an "auto," which the policy defined as "a land motor vehicle . . . designated for travel on public roads, including any attached machinery or equipment." The commercial general liability policy also excluded coverage for bodily injury arising out of the use of any auto. But unlike the errors and omissions policy, the commercial general liability policy contained an operation exception which provided coverage for bodily injury arising out of "[t]he operation of machinery or equipment that was attached to, or part of, a land vehicle that would qualify under the definition of 'mobile equipment' if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged."

Atain took the position that it had no duty to defend or indemnify its insured. After the claimant obtained a default judgment against the insured, the claimant proceeded to file a garnishment proceeding against Atain. At the District Court level Atain was successful in obtaining summary judgment when the Court held that because the woodchipper was not being actively used, running, or otherwise turned on during the accident, the facts indicated the woodchipper was not "in operation." Therefore, the auto exclusion in each of the insurance policies barred coverage. The claimant appealed.

The Appellate Court quickly dispensed with the appeal regarding the errors and omissions policy holding that it contained no exception to its auto exclusion and therefore the accident is not covered by that policy. Turning to the commercial general liability policy, the Appellate Court agreed with the District Court's conclusion that because the woodchipper was not in operation at the time of the accident there was no coverage.

Noting that the policy did not define "operation," the Appellate Court looked to the "plain, ordinary, and popular meaning" of the term and found the term "operation" means "the quality or state of being functional or operative." While the truck itself was in operation at the time of the accident, the Appellate Court held that was not enough to trigger coverage. Rather, the operation exception required that the bodily injury arise out of "[t]he operation of machinery or equipment that is attached to, or part of, a land vehicle." Given that the woodchipper was not being operated at the time of the accident, but rather passively pulled behind the truck, the court held that the operation exception did not apply.